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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005.

F.No. 373/37/B/15-RA / 37

Date of Issue 31.05.2018

ORDER NO. 307/2018-CUS (SZ) / ASRA / MUMBAI DATED 28.05.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Basheer Ahamed

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus-I No.107/2014 dated 10.12.2014 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by Shri Basheer Ahamed (herein after referred to as the Applicant) against the Order in Appeal C. Cus-I No. 107/2014 dated 10.12.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 12.09.2014 and was intercepted by the Customs Officers and on examination of his baggage and person resulted in the recovery of one gold chain weighing 75.8 grams valued at Rs.1,94,200/- (One lakh ninety four thousand two hundred).

3. After due process of the law vide Order-In-Original No. 1152/2014 AIU dated 12.09.2014, the Original Adjudicating Authority absolutely confiscated the gold chain weighing 75.8 grams valued at Rs.1,94,200/-; 8 numbers of Samsung S5 Mobile Phones valued at Rs.24,000/- and 3 numbers of Samsung Note 3 valued at Rs.9000/- under section 111(d),(l),(m) & (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 55,000/- was also imposed under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals-I) Chennai, vide his Order in Appeal C. Cus-I No. 107/2014 dated 10.12.2014 allowed redemption of the Samsung S-5 Mobile phones and Samsung Note 3 valued at Rs.33,000/- on payment of Redemption Fine of Rs.10,000/- and reduced the personal penalty to Rs.35,000/- but upheld the absolute confiscation of the gold chain weighing 75.8 grams valued at Rs.1,94,200/-.

5. The applicant has filed this Revision Application interalia on the grounds that;
 5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; He is the owner of the gold and had purchased it from his earnings; He was all along under the control of the officers and did not cross the Red Channel; Section 111 (d), (l), (m) and (o) are not attracted in the case; As per findings he was wearing the gold chain, and therefore the gold should have been released for re-export; there are no specific allegations that he had tried to cross the Green Channel, the only allegation is that he had not declared the gold; It is an admitted fact that the gold was worn at the time of interception and therefore there was no intention of trying to



smuggle the gold; As he was wearing the gold he had declared the worn gold to the officers, and having seen the gold the question of declaration does not arise;

5.2 The Applicant further pleaded that The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record the oral declaration; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions;

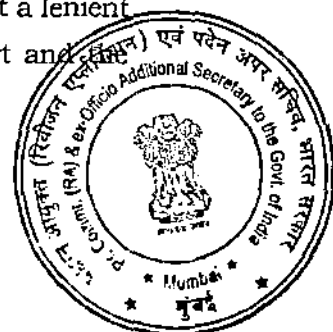
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export of the gold chain on payment of nominal redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 18.4.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. It is a fact that the gold bracelet was not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold was worn by the Applicant and it was visible and not ingeniously concealed. There are no previous offences registered against the Applicant. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant.

9. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The absolute confiscation of the gold is therefore harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and



Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.

10. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold jewelry weighing 75.8 grams valued at Rs.1,94,200/- (One lakh ninety four thousand two hundred) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 80,000/- (Rupees Eighty thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 35,000/- (Rupees Thirty Five thousand) to Rs.20,000/- (Rupees Twenty thousand) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

12. So, ordered.

Ashok Kumar Mehta

28.5.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.307/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.05.2018

To,

True Copy Attested

Shri Basheer Ahamed
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

Sankarsan Munda
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals-I), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
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