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GOVERNMENT OF INDIA  
 MINISTRY OF FINANCE  
 (DEPARTMENT OF REVENUE)  
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 Mumbai-400 005

F.No. 373/169/B/15-RA | 1/2

Date of Issue 31/05/2018

ORDER NO.313/2018-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 Suvarna Raju Yadangi

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.174/2015 dated 17.04.2015 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by Shri Suvarna Raju Yadangi (herein after referred to as the Applicant) against the Order in Appeal No. C. Cus-I No.174/2015 dated 17.04.2015 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 18.03.2015 and was intercepted by the Customs Officers and on examination resulted in the recovery of one gold bracelet weighing 73 grams valued at Rs. 1,71,915/- (One lakh seventy one thousand nine hundred and fifteen). After due process of the law vide Order-In-Original No. 302/2015 Batch B dated 18.03.2015, the Original Adjudicating Authority absolutely confiscated the gold bracelet weighing 73 grams valued at Rs.1,71,915/- 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.17,500/- was also imposed under Section 112 (a) of the Customs Act,1962.

3. 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.174/2015 dated 17.04.2015 rejected the Appeal.

4. The applicant has filed this Revision Application interalia on the grounds that;  
4.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Gold is not a prohibited item and according to the liberalized policy the gold can be released on payment of Redemption Fine and Penalty. The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The Applicant had worn the gold bracelet when he was intercepted by the officers and it was used jewelry; The goods must be prohibited before export or import mere non-declaration cannot render the goods prohibited; there are no specific allegations that he had tried to cross the Green Channel; the CCTV video record if the authorities peruse the same the truth will be ascertained; 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;



4.2 The Applicant further pleaded that 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; The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has held that under section 125 of the Act it is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner;

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

5. 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.

6. 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.

7. 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.

8. 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

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opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and the 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.

9. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold jewelry weighing 73 grams valued at Rs. 1,71,915/- (One lakh seventy one thousand nine hundred and fifteen) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 75,000/- (Rupees Seventy Five 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. 17,500/- (Rupees Seventeen Thousand Five hundred) to Rs. 15,000/- (Rupees Fifteen thousand) under section 112(a) of the Customs Act, 1962.

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

11. So, ordered.

*(Signature)*  
28.5.18

(ASHOK KUMAR MEHTA)  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No 313/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28-05-2018

To,

**True Copy Attested**

Shri Suvarna Raju Yadangi  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

*(Signature)*  
28/5/18  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Customs & 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.
4. Guard File.
5. Spare Copy.

