



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/26/B/15-RA | 5

Date of Issue 05-06-2018

ORDER NO. 321/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29.05.2018 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. Abdul Razak

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 No. 143/2014 dated 18.12.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Abdul Razak (herein after referred to as the "Applicant") against the order no C.Cus No. 143/2014 dated 18.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National arrived at the Chennai Airport on 09.09.2014. Examination of his person and baggage resulted in recovery of two gold chains totally weighing 174 gms valued at Rs. 4,82,154/- (Rupees Four lacs Eighty Two Thousand One hundred and Fifty Four) and one cylindrical gold piece weighing 200 gms valued at Rs. 5,54,200/- (Rupees Five Lakhs Fifty Four thousand two hundred). The two gold chains were recovered from his pant pockets and the gold bar was concealed in his rectum. In addition the Applicant also brought two Sony LED TV's 40" and 32". The Original Adjudicating Authority, vide his order 1125/2014 dated 09.10.2014 absolutely confiscated all the gold referred to above. A Penalty of Rs. 1,00,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant. The Sony TV's were released on applicable customs duty after allowing free allowance.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No. 143/2014 dated 18.12.2014 rejected the Appeal.

4. 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; The gold chain belonged to his family and purchased from his savings; the gold was brought for his daughters marriage; the gold chains were not concealed and hence it should have been allowed for re-export; The adjudication authority has not taken cognizance that the Applicant has not received the documents attached to the Show Cause Notice, and has passed the order in clear violation of natural justice; ; Even assuming, without



admitting that the passenger is not the owner of the gold, then the question of declaration does not arise as the declaration has to be given by the owner; Therefore the authority cannot take a stand that a declaration was not given by the passenger; Section 125 of the Customs Act does not make any distinction between the owner and the carrier;

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 High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act 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; The absolute confiscation of the gold and imposition of penalty was high and unreasonable; 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 prayed for re-export on payment of nominal redemption fine and reduced personal penalty and render justice.

5. A personal hearing in the case was held on 19.04.2018, 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 case records it is observed that the Applicant did not declare the gold at the time of interception.



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the case state that the gold chains were carried by the Applicant in his pant pocket and not ingeniously concealed Applicant. he was intercepted before he exited the Green Channel. The gold is claimed by the Applicant and there is no other claimant. As per the CBEC Circular 09/2001 mere non-submission of the declaration cannot be held against the Applicant. 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 with regard to the two gold chains is therefore unjustified. The Applicant has pleaded for re-export and the Government is inclined to accept the plea.

7. However, the one gold piece was recovered from the Applicants rectum. The concealment was intelligently planned so as to evade Customs duty and to smuggle the gold into India. The aspect of allowing the gold piece for re-export can be considered when imports have been made in a legal manner. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, would have escaped payment of customs duty. The aspect of allowing this gold piece for re-export cannot be considered under these circumstances.

9. Taking into consideration the foregoing discussion, the Government is of the opinion that a lenient view can be taken in the matter of the gold chains. The order of absolute confiscation of the gold chains in the impugned Order in Appeal therefore needs to be modified and the confiscated gold chains are liable to be allowed for re-export on payment of redemption fine and penalty. With regard to the gold piece concealed in the rectum, the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, would have escaped payment of customs duty. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold piece absolutely and imposed penalty.

10. In view of the above, Government allows redemption of the confiscated gold chains for re-export in lieu of fine. The gold chains weighing 174 gms valued at Rs. 4,82,154/- (Rupees Four lacs Eighty Two Thousand One hundred



and Fifty Four) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 2,50,000/- (Rupees Two lakhs Fifty 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. 1,00,000/- (Rupees One lakh) to Rs. 75,000/- (Rupees Seventy Five Thousand) under section 112(a) of the Customs Act,1962.

11. The Government finds no reason to interfere with the Order-in-Appeal, with regard to the gold piece. The Appellate order C. Cus. 143/2014 dated 18.12.2014 of the Commissioner of Customs (Appeals), confiscating absolutely the gold piece weighing 200 gms valued at Rs. 5,54,200/- (Rupees Five Lakhs Fifty Four thousand two hundred) is upheld as legal and proper.

12. Impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms

13. So, ordered.

Qualla

29.5.2018

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No.321/2018-CUS (SZ) /ASRA/MUMBAI

DATED 29.05.2018

To,

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

True Copy Attested

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

Sankarsan Munda
5/6/18

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

