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

F.No. 373/204/B/15-RA | 66

Date of Issue 05/06/2018

ORDER NO. 323/2018-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 Syed Imran

Respondent : Commissioner of Customs (Airport), Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 08/2015-TRY(CUS) dated 23.03.2015 passed by the Commissioner of Customs & C.Ex (Appeals) Trichy.



ORDER

This revision application has been filed by Shri Syed Imran (herein after referred to as the Applicant) against the Order in Appeal No. 08/2015-TRY(CUS) dated 23.03.2015 passed by the Commissioner of Customs (Appeals-I), Trichy.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 05.10.2014 and was intercepted by the Customs examination of his baggage and person resulted in the recovery of two gold chains weighing 250 grams valued at Rs. 6,43,235/- (Rupees Six lacs Forty Three thousand Two hundred and Thirty Five).

3. After due process of the law vide Order-In-Original No. 12/2015-Batch A dated 06.02.2015, the Original Adjudicating Authority confiscated the two gold chains 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. But allowed the redemption of the gold on payment of fine of Rs. 1,60,800/-. A Personal penalty of Rs. 64,000/- 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 No. 08/2015-TRY(CUS) dated 23.03.2015 rejected the Appeal.

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; Goods must be prohibited before import or export simply because goods were not declared goods cannot become prohibited; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; He was all along under the control of the officers at the Red channel there is no allegation that he tried to clear the green channel; The gold chains were worn at the time of interception it is visible and hence question of declaration does not arise; Wearing gold jewelry is not an offence under law and even if it is it can be released without any fine and penalty; Even assuming without admitting that he had not declared the gold it is only a technical fault.

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; The absolute confiscation of the gold is unreasonable there are several judgments of higher Courts which states that it is mandatory to exercise the power under section 125 of the Customs Act,1962.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for setting aside the impugned order and reduce the redemption fine and reduced personal penalty and thus 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 carefully gone through the facts of the case. The Applicant had gone to Malaysia on a short visit. A proper disclosure was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, 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 chains were worn by the Applicant and therefore it was not ingeniously concealed. There are no previous offences registered against the Applicant.

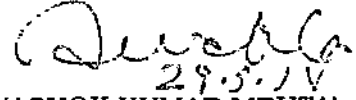
8. Government observes that the Original Adjudicating Authority has rightly exercised the option available under section 125 of the Customs Act,1962 and has rightly extended the option to redeem the gold on payment of redemption fine and penalty. Further, the Government notes that the redemption fine of Rs. 1,60,800/- (Rupees one lac Sixty thousand Eight hundred) is appropriate and the penalty of Rs. 64,000/- imposed on the two gold chains weighing 250 grams valued at Rs. 6,43,235/- (Rupees Six lacs Forty Three thousand Two hundred and Thirty Five) is also appropriate. Under the circumstances, the Government holds that Commissioner (Appeals) has rightly upheld the order of the Original Adjudicating Authority.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 08/2015-TRY(CUS) dated 23.03.2015 passed by Commissioner of Customs & C.Ex (Appeals) Trichy, is upheld as legal and proper.



9. Revision Application is dismissed.

10. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No. 313/2018-CUS (SZ) /ASRA/mumbai

DATED 29.05.2018

To,

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

Copy to:

1. The Commissioner of Customs, Trichy
2. The Commissioner of Customs and C. Ex. (Appeals), Trichy.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

**True Copy Attested**

  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Customs & C. Ex.

