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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. 373/51/B/15-RA

183

Date of Issue 29/06/2018

ORDER NO. 374/2018-CUS (SZ)/ASRA/MUMBAI DATED 31.05.2018 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. Mohamed Riyas

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 98/2014 dated 05.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Mohamed Riyas (herein referred to as Applicant) against the order 98/2014 dated 05.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian national had arrived at the Chennai Airport on 14.05.2014. Examination of his baggage resulted in the recovery of a gold chain weighing 241 grams valued at Rs. 7,20,590/- (Rupees Seven Lakhs Twenty thousand five hundred and Ninety).

3. The Original Adjudicating Authority, vide order No. 656/2014-AIU dated 19.08.2014 absolutely confiscated the items mentioned above under section 111(d) and (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 70,000/- 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) Chennai., vide his order No. 98/2014 dated 05.12.2014 allowed redemption of the said gold on payment of Redemption fine of Rs. 3,00,000/- and reduced the penalty from 70,000/- to Rs. 50,000/- and allowed the Appeal of the Applicant.

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; The Appellate Authority has simply glossed over all the judgements and points raised in the Appeal grounds; the gold was not brought for any monetary consideration; In the case of Vigneswaran vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner as the only undisputed fact is that the Applicant has not declared the gold and absolute confiscation is bad under law, further stating, I am constrained to set aside those portions of the impugned order in original confiscating the gold absolutely.; the gold chain was worn and not concealed ingeniously;

5.2 The Applicant further pleaded that CBEC circular No. 09/2004 gives specific directions to the officers that the declaration should not be left



blank. If not filled in by the passenger the officer will help in filing up the declaration card; 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 his case and prayed for reduction of redemption fine and reduced personal penalty.

6. 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 cited the decisions of GOI/Tribunals where redemption for re-export of gold was allowed. 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 goods were not declared by the Applicant as required under Section 77 of the Customs Act, 1962, and under the circumstances confiscation of the goods is justified.

8. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The goods were 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. Further, the redemption fine, penalty and the Customs duty of 35% to be paid is more than the value of the goods and as such it is 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 reduction of redemption fine and penalty and the Government is inclined to accept the plea. The Order in Appeal therefore needs to be modified.

9. In view of the above, the redemption fine imposed on the gold weighing 241 grams valued at Rs. 7,20,590/- (Rupees Seven Lakhs Twenty thousand five



hundred and Ninety) is ordered to be reduced from Rs. 3,00,000/- to (Rupees Three lakhs) to 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. 50,000/- (Rupees Fifty thousand) to Rs. 45,000/- (Rupees Forty five thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal stands modified to that extent.

11. Revision application is partly allowed on above terms.

12. So, ordered.

(Handwritten Signature)
21.5.18

(ASHOK KUMAR MEHTA)

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

ORDER No. 374/2018-CUS (SZ) /ASRA/Mumbai

DATED 31.05.2018

True Copy Attested

To,

Shri Mohamed Riyas

C/o S. Palanikumar, Advocate,

No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

(Handwritten Signature)
29/5/18

एस. आर. हिरुलकर
S. R. HIRULKAR

(A-C)

Copy to:

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

