

REGISTERED
SPEED POST

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

F.No. 373/61/B/16-RA

Date of Issue 12/07/2018

ORDER NO. 408/2018-CUS (SZ)/ASRA/MUMBAI DATED 07.06.2018 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 Mohammed Ihsan Rafeetheen

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 165/2016 dated 14.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Mohammed Ihsan Rafeetheen (herein referred to as Applicant) against the order 165/2016 dated 14.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

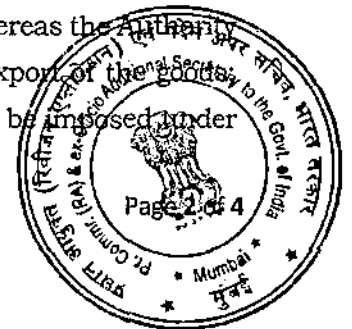
2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, A Sri Lankan national, at the Bangalore International Airport on 26.03.2014. The Applicant had not declared the goods and had opted for the green channel. Examination of his person resulted in recovery of a gold chain and a gold bracelet, worn by him totally weighing 190.56 grams valued at Rs. 5,59,865/- (Rupees Five Lakhs Fifty Nine thousand Eight hundred and Sixty five).

3. The Original Adjudicating Authority, vide order No. 89/2014 dated 01.04.2014 absolutely confiscated the gold mentioned above under section 111(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 45,000/- was imposed under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 15,000/- was also imposed under section 114AA of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Bangalore. The Commissioner of Customs (Appeals) Bangalore, vide his order No. 165/2016 dated 14.03.2016 rejected the Appeal.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia 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 not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The ownership of the gold is not disputed and there is no ingenious concealment; The gold is used and has been worn for several months; The gold was worn and was orally declared, having seen the visible gold the question of declaration does not arise; He was all along under the control of the officers at the red channel and had not crossed the green Channel; he comes to India occasionally and was not aware of the procedure; The question of eligibility to bring gold does not arise for the foreigner; Even assuming without admitting that he did not declare the gold it is only a technical fault; The case relates to import whereas the Authority has imposed penalty under Section 114AA which relates to export of the goods. When penalty is imposed under section 114AA, penalty cannot be imposed under section 112 of the Customs Act.



5.2 The Applicant further pleaded that as per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 states that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared; 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;

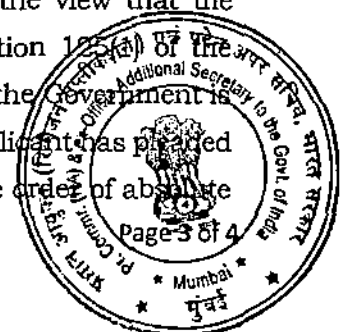
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for allowing re-export and reduction of the redemption fine and reduce personal penalty and thus render justice.

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 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. The goods were not declared by the passenger as required under Section 77 of the Customs Act, 1962. Under the circumstances confiscation of the goods is justified.

8. However, the Applicant had not yet crossed the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant is not a frequent traveler and does not have any previous offences registered against him. Government, also observes that the Applicant had worn the gold and there is no allegation of ingenious concealment. Further, 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 ~~Account sign/stamp~~ ~~of the~~ ~~Government~~ stamp the same, after taking the passenger's signature. Thus, mere ~~of the~~ ~~Government~~ ~~is~~ ~~of~~ ~~the~~ ~~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 ~~Page 3 of 4~~ because he is a foreign national. The absolute confiscation is therefore unjustified.

9. Further, There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(a) of the Customs Act, 1962 have to be exercised. 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 the Government is inclined to accept the plea. The order of absolute



[Handwritten signature]

confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated goods are liable to be allowed for re-export on payment of redemption fine and penalty. Government also holds that the declaration is required to be submitted under baggage rules and no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases.

10. In view of the above, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned gold totally weighing 190.56 grams valued at Rs. 5,59,865/- (Rupees Five Lakhs Fifty Nine thousand Eight hundred and Sixty five) is ordered to be redeemed for re-export on payment of redemption fine of Rs.2,00,000/- (Rupees Two Lakhs) 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. 45,000/- (Rupees Forty Five thousand) to Rs. 40,000/- (Rupees Forty Thousand) under section 112(a) of the Customs Act, 1962. The penalty of Rs. 15,000/- (Rupees Fifteen thousand) under section 114AA has been incorrectly imposed, the penalty is therefore set aside.

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

12. So, ordered.

(Handwritten Signature)
4761K

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

ORDER No. 408/2018-CUS (SZ) /ASRA/MUMBAI

DATED 07.06.2018

To,

Shri Mohammed Ihsan Rafeetheen
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

Copy to:

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

Attested

(Handwritten Signature)

SANKARSAN MUNDA
Asst. Commissioner of Customs & C. Ex.

