



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre.- I, Cuffe Parade,
Mumbai-400 005

F.No. 373/81/B/16-RA

9/9

Date of Issue 12/07/2018

ORDER NO. 409/2018-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 Syed Aboobucker Sahib

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. 371/2016
dated 21.04.2016 passed by the Commissioner of Customs
(Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Syed Aboobucker Sahib (herein referred to as Applicant) against the order 371/2016 dated 21.04.2016 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 15.10.2014. The Applicant had not declared the goods and had opted for the green channel. Examination of his person resulted in recovery of two gold chains, worn by him totally weighing 369.620 grams valued at Rs. 10,14,976/- (Rupees Ten Lakhs Fourteen thousand Nine hundred and Seventy six).

3. The Original Adjudicating Authority, vide order No. 271/2014 CUS dated 05.12.2014 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. 1,50,000/- was imposed under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 1,00,000/- 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. 371/2016 dated 21.04.2016 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 applicant has not made any false declaration or submitted false documents, hence the question of imposing penalty under section 114AA does not arise; The gold was worn and was orally declared, having seen the visible gold the question of declaration does not arise; he comes to India occasionally and was not aware of the procedure; 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; He was all along under the control of the officers at the red channel and had not crossed the green Channel; Gold is not a prohibited item and according to liberalized policy can be released on payment of redemption fine and penalty; Section 125 allows the redemption of goods even when confiscation is authorized;

5.2 The Applicant further pleaded that in the case of Vigneswaran vs. UOI in W.P. 6281 of 2014 (I) dated 12.03.2014 the Hon'ble high Court of Kerala 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, and there is no law barring foreigners visiting India from wearing gold ornaments further stating, I am constrained to set aside those portions of the impugned order in original confiscating the gold absolutely; the only allegation is that she did not declare the gold; 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;

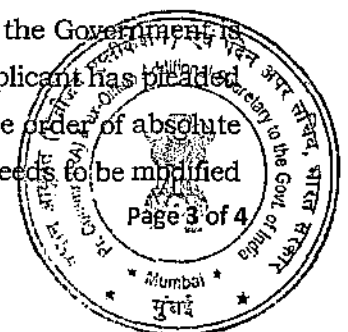
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for allowing re-export and reduction of the redemption fine and reduce personal penalty and thus render justice.

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 countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant, moreso 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(1) 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 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 369.620 grams valued at Rs. 10,14,976/- (Rupees Ten Lakhs Fourteen thousand Nine hundred and Seventy six) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 4,00,000/- (Rupees Four Lakh) 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. 1,50,000/- (Rupees One lakh Fifty thousand) to Rs.1,00,000/- (Rupees One Lakh) under section 112(a) of the Customs Act,1962. The penalty of Rs. 1,00,000/- (Rupees One lakh) 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.

(Signature)
7614

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

ORDER No.409/2018-CUS (SZ) /ASRA/MUMBAI

DATED 07-06.2018

Attested

To,

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

(Signature)
11/7/18

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

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.

