

REGISTERED
SPEED POST

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. 373/20/B/16-RA

Date of Issue 16/07/2018

ORDER NO. 418/2018-CUS (SZ)/ASRA/MUMBAI DATED 12.06.2018 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 Thameem Ansari

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I
No. 578/2015 dated 29.09.2015 passed by the Commissioner of
Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Thameem Ansari (herein referred to as Applicant) against the order 578/2015 dated 29.09.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant at the Chennai International Airport on 10.07.2015. 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 two gold bits, kept in his undergarments weighing 198 grams valued at Rs. 4,85,961/- (Rupees Four lakhs Eighty Five thousand Nine hundred and Sixty one).

3. The Original Adjudicating Authority, vide order No. 723/2015 Batch A dated 10.07.2015 absolutely confiscated the gold mentioned above under section 111(d),(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. 49,000/- was 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) vide his order No. 578/2015 dated 29.09.2015 upheld the absolute confiscation of the gold and rejected the Appeal.

5. Aggrieved with the above order 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 not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The gold chain was worn by the Applicant and it was not concealed; Gold is not a prohibited item and as per the liberalized policy it can be released on payment of redemption fine and penalty; Goods must be prohibited before import or export simply because of non-declaration goods cannot become prohibited; There is no allegation that he tried to cross the green channel, he was all along under the control of the officers at the red channel; He informed the officer orally that he was wearing used gold jewelry, and showed it to the officer, having seen the same the question of declaration does not arise; Section 125 of the Customs Act, 1962 allows release of the goods to the person from whose possession it was seized.

5.2 The Applicant further pleaded that in the case of Vigneshwaran 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 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. At first he pleaded that the delay in filing the Revision Application by 33 days may be condoned as communication of the Appellate order was delayed. 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. In the interest of justice, delay of 33 days is condoned and revision application is decided on merits. 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 was not intercepted while trying to exit the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant though a frequent traveler does not have any previous offences registered against him. Government, also observes that 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. 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 of the



ADJUDICATED BY
MUMBAI CUSTOMS
OFFICE

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.

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 198 grams valued at Rs. 4,85,961/- (Rupees Four lakhs Eighty Five thousand Nine hundred and Sixty one) 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. 49,000/- (Rupees Forty Nine thousand) to Rs.40,000/- (Rupees Forty thousand) under section 112(a) of the Customs Act,1962. .

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

12. So, ordered.

Ashok Kumar Mehta
12.6.2018

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

ORDER No. 418/2018-CUS (SZ) /ASRA/MUMBAI DATED 12-06-2018

To,

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

Attested

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.

Sankarsan Munda
16/7/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

