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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. 373/108/B/14-RA/15

Date of Issue 17/07/2018

ORDER NO.435/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 19.06.2018 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 Sivanesan

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 No. 1581/2013 dated 19.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

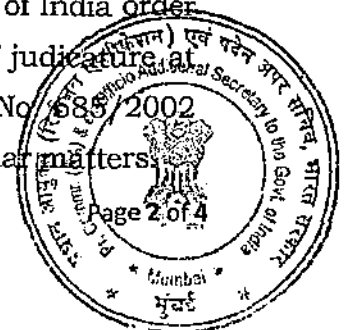
This revision application has been filed by Shri Sivanesan (herein referred to as Applicant) against the order no 1581/2013 dated 19.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 07.04.2013. The Examination of his baggage and person resulted in the recovery of a gold chain weighing 43.4 gms 2 cartons of Benson & Hedges Cigarettes and St. Remy Cognac 4ltrs totally valued at Rs. 1,27,457/- (Rupees One lakh Twenty seven thousand Four hundred and Fifty seven). After due process of the law vide Order-In-Original No. 373/ Batch A dated 07.04.2013 the Original Adjudicating Authority ordered absolute confiscation of the liquor and cigarettes and confiscated the impugned gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, but allowed redemption of the gold on payment of Rs. 62,000/- as redemption fine and also imposed penalty of Rs. 15,000/- under Section 112 (a).

3. Aggrieved by the said order, the applicant filed appeal before. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 1581/2013 dated 19.11.2013 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the following grounds that

4.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; that both the Respondents failed to see that a true declaration was made by the Applicant and nothing was concealed or misdeclared; that the request for re-export of the gold was not considered; the value adopted by the authorities is on the higher side; that both the Respondents failed to see that the Applicant had opted for the Red Channel proving his bonafides that he has got dutiable goods. However the officers have totally ignored this and registered a case against the Applicant; that both the Respondents have ignored orders of the Govt. of India order reported in ELY 1995 pages 287 to 308 and High Court of judicature at Bombay order dated 29.05.2002 in Criminal Writ Petition No. 583/2002 wherein re-export was allowed has granted re-export in similar matters.



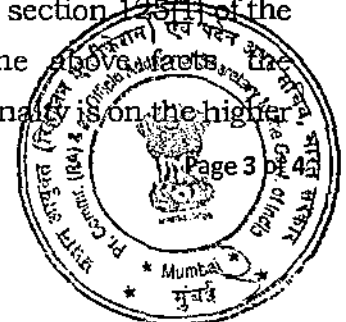
4.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and set aside the impugned orders and set aside the redemption fine of Rs.75,000/- and penalty of Rs. 15,000/- and order for re-export of the same and thereby render justice.

5. A personal hearing in the case was scheduled to be held on 22.03.2018, the Advocate for the respondent Shri K. Mohammed Ismail in his letter dated 21.03.2018 informed that his clients are unable to send their counsel all the way to Mumbai from Chennai and requested that the personal hearing may be waived and the grounds of the Revision Application may be taken as arguments for this Revision, and decide the cases as per relief sought for in the prayer of the Revision and oblige. The Applicant also pleaded that the delay in filing the Revision Application by 35 days may be condoned due to case file mishap in the office of the Advocate the adjudication order was misplaced by the Applicant inadvertently. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. In the interest of justice, delay of 35 days is condoned and revision application is decided on merits. A written declaration of gold 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 had not cleared the Green Channel. The gold was recovered from his person and it was not indigenously concealed. 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.

8. 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 the redemption fine and penalty is on the higher



side and 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 impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of reduced redemption fine and penalty.

9. The impugned gold is allowed for re-export and redemption fine imposed on the gold chain weighing 43.4 gms totally valued at Rs. 1,23,057/- (Rupees One lakh Twenty three thousand and Fifty seven) is reduced from Rs. 62,000/- (Rupees Sixty two thousand) to Rs.45,000/- (Rupees Forty five 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. 15,000/- (Rupees Fifteen thousand) to Rs. 10,000/- (Rupees Ten thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So, ordered.

Ashok Kumar Mehta
19.6.18

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

ORDER No. 435/2018-CUS (SZ) /ASRA/MUMBAI.

DATED/9.06.2018

To,

Shri Sivanesan
K. Mohamed Ismail
Advocate
New No. 102 (old No. 271)
Linghi Chetty Street,
Chennai - 1.

Attested

Sankarsan Munda
SANKARSAN MUNDA
Asst. Commissioner of Custom & C. Ex.

Copy to:

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

