



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

F.No. 373/232/B/15-RA/285

Date of Issue 18/07/2018

ORDER NO. 144/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21.06.2018 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 Abdul Rawup

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 11/2015 dated 24.03.2015 passed by the Commissioner of Customs & C. Excise (Appeals-2), Trichy.



ORDER

This revision application has been filed by Shri Abdul Rawup (herein after referred to as the Applicant) against the order no C. Cus No. 11/2015 dated 24.03.2015 passed by the Commissioner of Customs (Appeals), Trichy.

2. Briefly stated the facts of the case is that the applicant arrived at the Chennai Airport on 12.02.2014. Examination of his hand baggage resulted in the recovery of a gold chain beneath his clothes weighing 283.8 gms valued at Rs. 8,55,657/- (Rupees Eight lakhs Fifty five thousand Six hundred and Fifty seven).

3. The Original Adjudicating Authority vide Order-In-Original No. 40/2014 dated 31.12.2014 ordered absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 1,50,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 11/2015 dated 24.03.2015 rejected the appeal of the applicant.

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

5.1. At first the Applicant pleaded that the delay in filing the Revision Application by 25 days may be condoned as the advocate had undergone cataract surgery.

5.2 The Applicant contends that the gold chain was kept in the hand bag and it was not concealed; There was no intention to conceal the gold; he himself took out the gold and showed it to the officers; at the entry to the baggage hall after admitting that he had carried gold; he was not given a chance to declare because he was intercepted at the entry point and not at the exit; It is wrongly held that the gold was brought for commercial purpose; The Applicant further pleaded that as per 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 held that there is no law preventing foreigners visiting India from wearing gold ornaments and directed the revenue to unconditionally return the gold to the petitioner, observing that only because of not declaring the gold, absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold. That absolute confiscation is not warranted in the case; There are numerous case judgements where it is clarified that gold is restricted not prohibited; He is not a frequent flier and there are no custom offence against him previously; There was no ingenious concealment.



5.3 The Revision Applicant cited various assorted judgments in support of his case and prayed for re-export of the gold on redemption fine and personal penalty.

6. A personal hearing in the case was scheduled to be held on 05.07.2018, the Advocate for the respondent Shri N. Manickam in his letter dated 21.06.2018 informed that the cases may be decided on the merits based on the grounds of the Revision Application as they were unable to attend the personal hearing in person. 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 25 days is condoned and revision application is decided on merits. The goods were not properly 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 is no allegation of the Applicant trying to pass through the green channel. The ownership of the gold is not disputed. Government, also observes that the gold was kept in his hand baggage and there was no ingenious concealment. The Applicant is not a frequent traveler, and there are no previous offences registered against him. There was no concerted attempt at smuggling these goods into India. 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.

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 on redemption fine and reduced personal penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the confiscated goods are liable to be allowed for re-export on redemption fine and penalty.

10. In view of the above, Government allows redemption of the confiscated gold bits for re-export in lieu of fine. The gold chain weighing 283.8 gms valued at Rs



8,55,657/- (Rupees Eight lakhs Fifty five thousand Six hundred and Fifty seven) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 3,00,000/- (Rupees Three 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. 1,50,000/- (Rupees One lakh Fifty thousand) to Rs.75,000/- ( Rupees Seventy five 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.

*(Handwritten Signature)*  
21.6.18

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

ORDER No. *441*/2018-CUS (SZ) /ASRA/MUMBAI

DATED 21-06-2018

To,

Shri Abdul Kalam  
s/o Ebrahim Gani  
No. 4/54-D1 Musleem ST,  
Melaparthibanur,  
Parthibanur Post,  
Ramanathapuram – 623 608.

Copy to:

1. The Commissioner of Customs, Trichy
2. The Commissioner of Customs & C. Excise (Appeals-2), Trichy.
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.

