

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. 373/198/B/14-RA/2014

Date of Issue 24/07/2018

ORDER NO. 478/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.06.2018 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 Jamaldeen

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. 593-595/2014 dated 03.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Jamaldeen (herein referred to as Applicant) against the order no 593-595/2014 dated 03.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan national at the Chennai Airport on 31.12.2013. The Examination of her person resulted in the recovery of one gold chain and two bangles weighing 197 grams totally valued at Rs. 4,93,174/- (Rupees Four lakhs Ninety three thousand one hundred and Seventy four). After due process of the law vide Order-In-Original No. 1546/2013 Batch A dated 31.12.2013 the Original Adjudicating Authority absolutely 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, and also imposed penalty of Rs. 50,000/- 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. 593-595/2014 dated 03.04.2014 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; The lower authority failed to see that the Applicants were proceeding towards the Red channel; The gold was worn and was visible to the naked eye and it amounts to a declaration; The Applicant did not cross the customs barrier and under the circumstances the import itself is not completed; the lower authority has failed to see that section 79 Customs Act, 1962 is not confined only to baggage personal effects includes any article contained in the baggage; The Applicant and his family clearly comes across as a tourist being a foreigner; Circular no 72/98 dated 24.09.98 clearly states that person effects includes personal jewelry and can be cleared for re-export free of duty; The Adjudicating authority should not have held that gold is a prohibited item; The gold was visible to the naked eye and therefore should not have been absolutely confiscated; The Applicants came to



India on a pilgrimage and were in India for only seven days; The gold was personal jewelry and not brought for commercial sale; Not extending the option under the section 125 of the Customs Act, 1962 violates the principles of natural justice; Gold is regulated not prohibited; The Applicant volunteered to pay duty and he had foreign currency for the same but was ignored; Non consideration of section 125 of Customs Act is against law; The lower authority ought not to have imposed Higher penalty of Rs. 50,000/- under section 112 of the customs Act, when there is no mensrea.

4.2 The Applicant prayed that this Hon'ble Forum may be pleased to set aside the order of Lower authorities and prays for re export and to set aside the order of absolute confiscation and thus render justice.

5. A personal hearing in the case was scheduled to be held on 30.05.2018, the Advocate for the respondent Shri A. Ganesh reiterated the submissions in the Revision Application and requested for reduction in fine and penalty. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The goods were not properly declared and under the circumstances confiscation of the goods is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The goods were recovered from his hip pocket and it was not indigenously concealed. 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. 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 reduction of the redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the confiscated goods is liable to be allowed for re-export on payment of redemption fine and penalty.

8. In view of the above, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned gold totally weighed 33.93 grams totally valued at Rs. 4,93,174/- (Rupees Four lakhs Ninety three



2

thousand one hundred and Seventy four) 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. 50,000/- (Rupees Fifty thousand.) to Rs. 40,000/- (Rupees Forty 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
28/6/18

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

ORDER No. 478/2018-CUS (SZ) /ASRA/mumbai

DATED 28-06.2018

To,

Shri Jamaldeen
C/o A. Ganesh, Advocate,
F. Block, 179, (New No. 8)
Annanagar,
Chennai 600 102,
Tamilnadu

ATTESTED

Sankarsan Munda
27/7/18

SANKARSAN MUNDA
Asstt. 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.

