

373/243/B/16-RA

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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. 373/243/B/16-RA/1011

Date of Issue 24/07/2018

ORDER NO. 481/2018-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 Mohamed Hiyas

Respondent : Commissioner of Customs(Airport), Cochin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 119/2016 dated 29.09.2016 passed by the Commissioner of Customs (Appeals) Cochin.



ORDER

This revision application has been filed by Shri Mohamed Hiyas (herein after referred to as the Applicant) against the order no 119/2016 dated 29.09.2016 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case is that the applicant a Sri Lankan national arrived at the Cochin Airport on 23.05.2016. Examination of his person resulted in the recovery of a gold bracelet and a gold chain totally weighing 118.62 grams worn by the Applicant and three cut gold pieces weighing 89.68 grams totally valued at approximately Rs. 5,89,672/- (Rupees Five lakhs Eighty nine thousand Six hundred and Seventy two). The three cut gold pieces were stitched along the zipper of his pants and the rest of the gold was worn by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 203/2016 dated 23.05.2016 ordered absolute confiscation of the impugned gold under Section 111 (d), (i) (l) and (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 10,000/- 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. 119/2016 dated 29.09.2016 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following 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 simply glossed over all the judgements and points raised in the Appeal grounds; The applicant was wearing the gold chain and bracelet and as such baggage rules are not attracted; Goods must be prohibited before import or export mere non-declaration cannot become prohibited; There are on specific allegations that he passed through or tried to cross the Green Channel, he was all along at the Red channel under the control of the officers; The gold chain and bracelet were worn and not concealed by the Applicant, having shown the gold and having seen the same the question of declaration does not arise; These gold jewelry have been worn by the Applicant for the last several months; The only allegation against him is that he did not declare the gold;

5.2 The Applicant further pleaded that as per the case of Vigneswaran vs UOI एवं पदेन अपर सचिव, भारत सरकार 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, further observing that only because of not declaring the gold, absolute confiscation is bad under law, as the only allegation is that she did not declare the gold.

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

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. 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 was intercepted before he exited the Green Channel. The gold chain and bracelet totally weighing 118.62 grams were worn by the Applicant and there is no allegation of ingenious concealment with regard to this gold. However the three cut gold pieces six were ingeniously concealed by stitching it along the zipper of his pants, the Applicant did not make a proper declaration of this gold inspite of being asked regarding its possession. This reveals mensrea and that there was a concerted attempt at smuggling this gold into India. The Applicant does not have any previous offences registered against him. Government, also observes that there is no allegation of ingenious concealment with regard to the gold worn by the Applicant but the gold pieces recovered from his pants zipper were definitely concealed so as to avoid detection and avoid the payment of Customs duty. Government observes that the Applicant has pleaded for re-export of the gold on payment of redemption fine and reduced personal penalty and the Government is inclined to accept the plea only in the case of the gold worn by the Applicant as it was not ingeniously concealed. With regard to the rest of the gold, the actions of the Applicant indicate that he had no intention of declaring it to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty. In view of the above facts, the impugned Order in Appeal therefore needs to be modified and part of the confiscated goods are liable to be allowed for re-export on redemption fine and penalty.

9. In view of the above, Government allows redemption of the confiscated jewelry for re-export in lieu of fine. The gold jewelry weighing 118.62 grams valued at



approximately Rs. 3,35,799/- (Rupees Three lakhs Thirty Five thousand Seven hundred and Ninety Nine) is ordered to be redeemed for re-export on payment of redemption fine of Rs.1,20,000/- (Rupees One lakh Twenty thousand) under section 125 of the Customs Act, 1962. Government observes that the penalty of Rs. 10,000/- imposed on the Applicant under section 112(a) of the Customs Act,1962 is appropriate.

10. The Government finds no reason to interfere with the Order-in-Appeal, with regard to the three cut gold pieces which were ingeniously concealed by stitching it along the zipper of his pants. The impugned Appellate order No. 119/2016 dated 29.09.2016 of the Commissioner of Customs (Appeals), confiscating absolutely the gold pieces weighing 89.68 gms valued at approximately Rs. 2,53,873/- (Rupees Two Lakhs Fifty three thousand Eight hundred and Seventy three) upheld as legal and proper.

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

12. So, ordered.

Ashok Kumar Mehta
28/5/18

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

ORDER No. 481/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 28.05.2018

To,

Shri Mohamed Hiyas
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, Airport, Cochin.
2. The Commissioner of Customs (Appeals), Cochin.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

Sankarsan Munda
28/5/18

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

