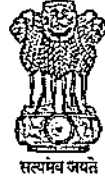


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
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Mumbai-400 005

F.No. 373/99/B/14-RA

1118

Date of Issue 30/07/2018

ORDER NO. 509/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 17.07.2018
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 V. Elangovan

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. 1782/2013 dated 05.12.2013 passed by the
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri V. Elangovan (herein referred to as Applicant) against the order no 1782/2013 dated 05.12.2013 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 26.06.2013. He was intercepted while attempting to pass through the green Channel and a personal search resulted in the recovery of a pair of gold bangles and a gold chain totally weighing 78.6 gms valued at Rs. 1,95,896/- (Rupees One lakh Ninety Five thousand Eight hundred and Ninety six). After due process of the law vide Order-In-Original No. 727/ Batch C dated 26.06.2013 the Original Adjudicating Authority ordered absolute confiscation of the impugned gold under Section 111 (d) & (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, 1992. A penalty of Rs. 19,000/- under was imposed under section Section 112 (a) of the Customs Act, 1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1782/2013 dated 05.12.2013 rejected the appeal of the applicant.

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

3.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; The Applicant was not aware that he was not eligible to bring gold and there for no malafide intention could be attributed and therefore confiscation and penalty is unwarranted; the Applicant was not aware that the goods would attract customs duty; a small quantity of gold cannot be termed as commercial quantity, the order is therefore misconceived and liable to be set aside; The gold was brought on the eve of his daughters wedding; The Applicant is not a frequent traveler; An option of redeeming the gold should have been extended under section 125 of the Customs Act, 1962, instead of absolute confiscation; The quantum of penalty imposed is grossly disproportionate to the penalty imposed.

3.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and pass other consequential order and thereby render justice.



4. A personal hearing in the case was scheduled on 17.07.2018, the Applicant reiterated that he had not crossed the Green Channel. He had brought the gold for his daughters wedding and not for commercial sale and pleaded for a lenient view in the matter, and the gold be released on redemption fine and reduced penalty. Nobody from the department attended the personal hearing.

5. The Government has gone through the facts of the case. 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.

6. However, the ownership of the gold is not disputed. The gold was recovered from his person and it was not indigenously concealed. The Applicant is not a frequent traveler. The Applicant is not a repeat offender and does not have any previous cases registered against him. The quantity of gold is not large enough to be termed as commercial quantity. 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.

7. 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 absolute confiscation of the gold is therefore harsh and unjustified. 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 suitable reliefs 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 gold is liable to be allowed for re-export on payment of redemption fine and penalty.

8. The assorted gold jewelry weighing 78.6 gms valued at Rs. 1,95,896/- Rupees One lakh Ninety Five thousand Eight hundred and Ninety six is ordered to be redeemed for re-export on payment of redemption fine of Rs. 10,000/-



(Rupees Seventy 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. 19,000/- (Rupees Nineteen 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.

(Handwritten Signature)
17.7.18

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

ORDER No. ⁵⁰⁹/2018-CUS (SZ) /ASRA/mumBAZ. DATED 17.07.2018

To,

Shri V. Elangovan
C1/128, B Main Road,
Koopachikotai Post,
Mannargudi,
Thiruvarur Dist.

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

ATTESTED

(Handwritten Signature)
30/7/18

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

