



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. 373/50/B/15-RA

Date of Issue 30/07/2018

ORDER NO. 511/2018-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 . Jesudoss

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 57/2014-Trichy (Cus) dated 14.10.2014 passed by the Commissioner of Customs & Central Excise (Appeals), Trichy.



ORDER

This revision application has been filed by Shri . Jesudoss (herein referred to as Applicant) against the order no 57/2014-Try (Cus) dated 14.10.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Tiruchirapalli Airport on 19.12.2011. He was intercepted and found in possession of 138.400 grams of gold in the form of fish shaped pendants totally valued at Rs. 3,55,488/- ( Rupees Three lakh Fifty five thousand Four hundred and Eighty eight). The gold was recovered from the belt pouch carried by the Applicant.

3 After due process of the law vide Order-In-Original No. 202/2013 dated 27.11.2013 the Original Adjudicating Authority ordered absolute confiscation of 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. 60,000/- under 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. 57/2014-Try (Cus) dated 14.10.2014 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; 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 Government of India reported in ELY 1995 pages 287 to 308, and High Court of judicature at Bombay in its order dated 29.05.2002, Criminal Writ Petition No. 685/2002, wherein re-export has been 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 penalty 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 03.07.2018, the Advocate for the respondent Shri K. Mohammed Ismail in his letter dated 02.07.2018 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. Nobody from the department attended the personal hearing.

6. 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.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel, as the Applicant was intercepted at the X-ray scanner. The gold was recovered from his belt pouch which was being examined at the X-ray scanner and it was not indigenously concealed. There is no allegation that the Applicant is a repeat offender and he does not have any previous cases registered against him. The ownership of the gold is not disputed. 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. The section also does not discriminate between the owner and carrier. The gold was recovered from the possession of the Applicant and there is no other claimant. 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 re-export 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.

AC19/11/12 The assorted gold jewelry weighing 138.400 grams of gold in the form of fish shaped pendants totally valued at Rs. 3,55,488/- (Rupees Three lakh Fifty five thousand Four hundred and Eighty eight) is ordered to be redeemed for re-export on payment of redemption fine of Rs.1,40,000/- (Rupees One lakh Forty 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. 60,000/- (Rupees Sixty thousand) to Rs. 30,000/- (Rupees Thirty thousand) under section 112(a) of the Customs Act, 1962.



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

11. So, ordered.

*(Handwritten Signature)*  
17.7.18

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

ORDER No. 511/2018-CUS (SZ) /ASRA/MUMBAI

DATED 17.07.2018

To,

Shri Jesudoss  
s/o Savari mutthu,  
Ward No. 2, Door No. 89,  
Nagamuthangudi, (PO)  
Dist : Sivagangai-623 702.

Copy to:

1. The Commissioner of Customs, Trichy International Airport, Trichy.
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.

