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SPEED POST

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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. 380/20/B/15-RA

११

Date of Issue 02/08/2018

ORDER NO. 546/2018-CUS (SZ)/ASRA/MUMBAI DATED 25.07.2018 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 : Commissioner of Customs, Chennai.

Respondent : Sachin Vitthal

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No.
153/2014 dated 22.12.2014 passed by the Commissioner of
Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by the Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order 153/2014 dated 22.12.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, at the Chennai International Airport on 26.08.2014 while passing through the green channel. Examination of his person resulted in recovery of a gold chain weighing 142 grams valued at Rs. 3,70,514/- (Rupees Three lakhs Seventy thousand Five hundred and Fourteen). The gold chain was worn by the Applicant.

3. The Original Adjudicating Authority, vide order No. 1056/2014 Batch D dated 26.08.2014 absolutely confiscated the gold mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 37,000/- was imposed under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai, Commissioner of Customs (Appeals) Chennai, vide his order No. 153/2014 dated 22.12.2014, set aside the absolute confiscation and allowed redemption of the gold on payment of Rs. 1,10,000/- keeping the penalty imposed intact.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 The Order of the Commissioner (Appeals) is neither legal nor proper; the respondent had tried to smuggle the gold by concealing it indigenously; The Respondent has contravened the section 77 and 11 of the Customs Act, 1962 and therefore the gold is liable for absolute confiscation; If the officers had not intercepted the passenger he would have gone unnoticed without payment of duty; The respondent has stayed abroad only for 86 days and did not have foreign currency for payment of customs duty and hence ineligible to import gold under Notification No. 12/2012 and Baggage rules; the Respondent has not filed any declaration; Gold is a restricted item and if attempted to be smuggled it becomes prohibited and therefore



confiscated absolutely; the order of the Appellate authority makes smuggling an attractive proposition.

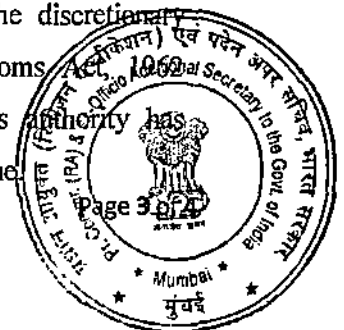
5.2 The Revision Applicant prayed for setting aside the order of the the Appellate authority or such an order as deemed fit.

6. In view of the above, the Respondent was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was held on 06.07.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. In his written reply he interalia submitted that

6.2 The Applicant had worn the gold chain and when intercepted after the scan formalities revealed the gold to the officers; the gold belonged to his family and he had purchased the gold from his own earnings; The respondent was wearing the gold and it was old and used; he orally declared the gold and showed it to the officers having seen the gold the question of declaration does not arise; As per the findings in the order in original there are no allegations of having crossed the green channel; In the case of Vigneswaran vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner, observing that only because of not declaring the gold, the absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions.

6.3 The respondent cited case laws in support of his case and prayed that the Revision application may be dismissed and render justice.

7. The Government has gone through the case records it is observed that the respondent did not cross the green channel and was intercepted before he attempted the same. The ownership of the gold is not disputed. There is no allegation of indigenous concealment, in fact the respondent had worn the gold. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. 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. Under the circumstances, the Appellate authority has rightly extended the option of redemption of the gold on payment of redemption fine.



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9. In conclusion, the Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 153/2014 dated 22.12.2014 passed by the Commissioner of Customs (Appeals-I), Chennai, is upheld as legal and proper.

10. Revision application is accordingly dismissed.

11. So, ordered.

Ashok Kumar Mehta
25.7.18

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

ORDER No. ⁵⁴⁶/2018-CUS (SZ)/ASRA/Mumbai DATED 25.07.2018

To,

1. The Commissioner of Customs,
Custom House,
Rajaji Salai,
Chennai.
2. Shri Iqbal Adukkathil
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

Copy to:

1. The Commissioner of Customs (Appeals), Chennai
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED

Sankarsan Munda
21/8/18

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

