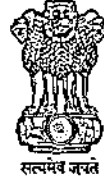


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Mumbai-400 005

F.No. 373/32/B/14-RA

1193

Date of Issue 03/08/2018

ORDER NO. 549/2018-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 : Shri R. Ganesh Raja

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. 1807/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Ganesh Raja (herein referred to as Applicant) against the order in Appeal C.Cus no 1807/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen, arrived at the Chennai Airport on 15.11.2012. He was intercepted and examination of his person resulted in the recovery of a gold chain totally weighing 111 gms valued at Rs. 3,39,683/- (Rupees Three lakhs Thirty Nine thousand Six hundred and Eighty three).

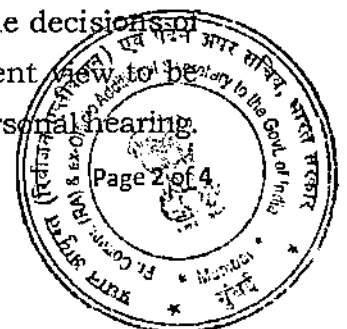
3. After due process of the law vide Order-In-Original No. 807/2012 dated 15.11.2012 the Original Adjudicating Authority ordered confiscation of the impugned gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. But allowed redemption of the gold for re-export on payment of a fine of Rs. 1,70,000/- and imposed penalty of Rs. 34,000/- 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. 1807/2013 dated 05.12.2013 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 authorities is against the law and weight of evidence and probabilities of the case; The adjudicating authority has failed to see that a single gold chain is for personal use and not commercial quantity; No reason is forthcoming as to why duty exceeding the prescribed limits has been imposed;

4.2 The Revision Applicant cited case laws in his defence and prayed for setting aside the order in original and pass such reliefs as deemed fit and thus 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 T. Chezhiyan attended the hearing, he reiterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals in support of his case and requested for a lenient view to be taken in the matter. 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 in fact there is no allegation that he tried to clear the green channel; There is also no allegation that the gold was concealed in any way, and hence it assumed there has been no concealment whatsoever. 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 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. 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 reduction of redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. The redemption fine imposed on the assorted gold jewelry weighing 111 gms valued at Rs. 3,39,683/- (Rupees Three lakhs Thirty Nine thousand Six hundred and Eighty three) is reduced from Rs. 1,70,000/- (Rupees One lakh Seventy thousand) to Rs.1,10,000/- (Rupees One lakh Ten 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. 34,000/- (Rupees Thirty four thousand) to Rs.22,000/- (Rupees Twenty two thousand) under section 112 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.

Ashok Kumar Mehta
25.7.18

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

ORDER No. ⁵⁴⁹/2018-CUS (SZ) /ASRA/mumbai,

DATED 25.07.2018

To,

Shri R. Ganesh Raja
c/o Shri T. Chezhiyan
Advocate.
No. 8 Eldams Road,
Alwarpet,
Chennai-600 018.

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

Sankarsan Munda
25/7/18

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

