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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F.No. 373/29/B/14-RA/19M

Date of Issue 03/08/2018

ORDER NO. 553/2018-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 Sekh Abdul Gaffar

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. 1783/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

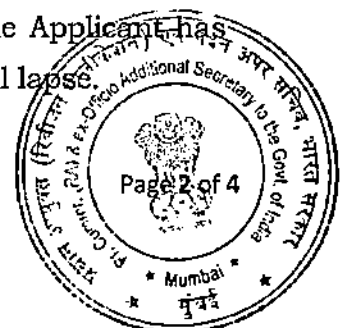
This revision application has been filed by Shri Sekh Abdul Gaffar (herein referred to as Applicant) against the order no 1783/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 09.12.2012. He was intercepted and examination of his person resulted in the recovery of assorted gold jewelry totally weighing 500 gms valued at Rs. 15,24,155/- ( Rupees Fifteen lakhs Twenty four thousand One hundred and Fifty five). The gold chain weighing 345 grams was worn by the Applicant and the rest of the gold was recovered from his pant pockets.

3. After due process of the law vide Order-In-Original No. 358/2013 (AIR) dated 09.04.2013 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 on payment of a fine of Rs. 7,70,000/- and imposed penalty of Rs. 1,55,000/- 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. 1783/2013 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 Applicant is gravely prejudiced with the exorbitant fine and penalty; The adjudicating authority has also failed to look into the statutory provisions of section 112(a) of the Customs Act,1962 which categorically fixes the penalty as not exceeding the duty sought to be evaded or Rs. 5000/- : No reason is forthcoming as to why duty exceeding the prescribed limits has been imposed; The adjudicating authority failed to note that a concessional rate of duty has been given to passengers who have stayed abroad for more than 6 months; No reason has been given as to why such high redemption fine of 50% has been imposed, In the present case the value of the gold has been reduced to Rs. 11,50,000/- on the date of release; The adjudicating authority has failed to consider that the Applicant has been made to suffer a huge fine and penalty for a technical lapse.



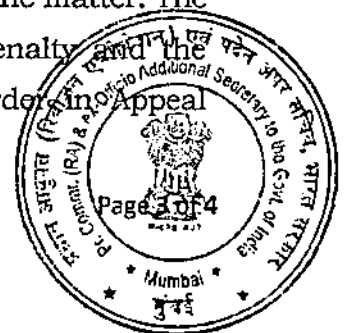
4.2 The Revision Applicant cited case laws in his defence and prayed for setting aside the order in original and pass such reliefs as deemed fit and thus thereby render justice.

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 where option for re-export of gold was allowed 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. The gold chain was worn by the Applicant and the rest of the gold was recovered from his pant pockets 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 Applicant is an eligible passenger for concessional rate of duty. 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 500 gms valued at Rs. 15,24,155/- ( Rupees Fifteen lakhs Twenty four thousand One hundred and Fifty five) is reduced from Rs. 7,70,000/- (Rupees Seven lakhs Seventy thousand) to Rs. 5,00,000/- ( Rupees Five lakhs) 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. 1,55,000/- (Rupees One lakh Fifty five thousand ) to Rs. 1,00,000/- ( Rupees One lakh ) 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.

*(Signature)*  
25.7.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. <sup>553</sup>/2018-CUS (SZ) /ASRA/Mumbai.

DATED 25.07.2018

To,

Shri Sekh Abdul Gaffar  
c/o Shri T. Chezhiyan  
Advocate.  
No. 8 Eldams Road,  
Alwarpet,  
Chennai-600 018.

**ATTESTED**

*(Signature)*

SANKARSAN MUNDA

Asstt. Commissioner of Custom & C. Ex.

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.

