

REGISTERED
SPEED POST

सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/285/B/14-RA

Date of Issue 03/08/2018

ORDER NO. ⁵⁵⁸/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.07.2018
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 Narayana Maddi

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. 842/2014 dated 12.05.2014 passed by the
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Narayana Maddi (herein referred to as Applicant) against the order no 842/2014 dated 12.05.2014 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 27.12.2013. He was intercepted and examination of his baggage and person resulted in the recovery of silver coated gold coins totally weighing 73 gms valued at Rs.1,82,750/- (Rupees One lakh Eighty two thousand seven hundred and fifty). The gold was recovered from the checked in baggage of the Applicant.

3. After due process of the law vide Order-In-Original No. 1534/2013 Batch A dated 27.12.2013 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 imposed penalty of Rs. 18,000/- (Rupees Eighteen thousand) 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. 842/2014 dated 12.05.2014 rejected the appeal of the applicant.

4. The Revision Application has been filed inter alia 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 Applicant is a non-commercial person and the goods are gifted articles by the Casino in appreciation of his achievements; The Applicant has not acted with a malafide intention but lack of proper knowledge, therefore seizing the goods and imposing penalty is illegal as per law;

4.2 The Revision Applicant 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 re-iterated the submissions filed in Revision Application and cited the



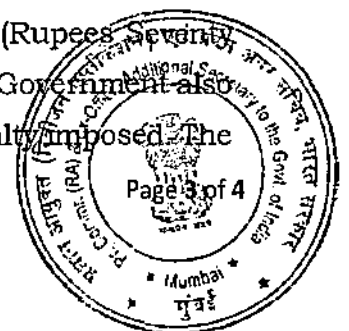
decisions of GOI/Tribunals where option for re-export of gold was allowed and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

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, Government notes that the ownership of the gold is undisputed, the facts of the case state that there is no allegation that the Applicant had tried to pass through the green channel. The gold was carried by the applicant in his baggage and there was no indigenous concealment. 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. The Applicant has pleaded that the goods are old and used. Government is of the opinion that a lenient view can be taken in the matter. In view of the above facts, the impugned Order in Appeal needs to be modified and the confiscated goods are liable to be allowed for re-export on reduced redemption fine and penalty.

9. The impugned gold weighing 73 grams totally valued at Rs.1,82,750/- (Rupees One lakh Eighty two thousand seven hundred and fifty) is ordered to be redeemed for re-export on redemption fine of Rs. 75,000/- (Rupees Seventy Five 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. 18,000/- (Rupees Eighteen thousand) to Rs. 15,000/- (Rupees Fifteen 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.

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

ORDER No. ⁵⁵⁸/2018-CUS (SZ) /ASRA/MUMBAI DATED 27.07.2018

To,

Shri Narayana Madhi.
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

(Handwritten Signature)

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

