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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. 373/134/B/15-RA

Date of Issue 10/08/2018

ORDER NO. 564/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.07.2018 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 S. Kumar

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-I No. 114/2014 dated 11.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri G. Vinayagamoorthy (herein referred to as Applicant) against the Order in Appeal C. Cus No. 114/2014 dated 11.12.2014 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 19.07.2014. He was intercepted and examination of his person resulted in the recovery of a gold chain and a gold kada totally weighing 278.5 gms valued at Rs. 7,95,117/- (Rupees Seven lakhs Ninety Five thousand One hundred and Seventeen).

3. After due process of the law vide Order-In-Original No. 892/2014 -AIU dated 09.09.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 70,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 114/2014 dated 11.12.2014 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 authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles; The Applicant not a trader or a frequent traveler; The jewelry was made in India and was taken abroad while leaving the country, he had also submitted the bill of acquisition to prove its Indian made, however the officers did not listen to his pleadings and seized the jewelry and typed statements to suit the proceedings; The applicant at the time of personal hearing had informed the adjudicating authority of these details and the same was recorded; Without considering the lacunae in the findings the adjudicating authority has mechanically rejected the appeal; The impugned gold chain and kada was worn by the applicant; The gold was therefore not concealed and there is no previous offence of the applicant and therefore option to redeem the gold ought to have been given to the Applicant as it is mandatory under the section 112 of the Customs Act,1962; The quantum of penalty should also be



proportionate to the role played by the individual; When goods are not prohibited the option to pay fine and penalty should have been extended to the Applicant.

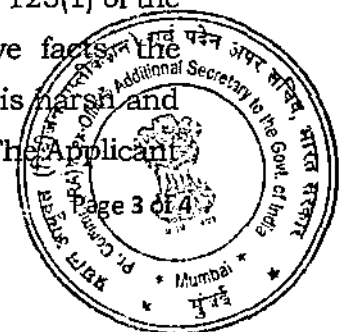
4.2 The Revision Applicant cited case laws in his defense and prayed for release of the gold unconditionally by passing such orders as deem fit in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar 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 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 impugned gold was worn by the Applicant and it was not indigenously concealed. The Applicant further avers that the gold jewelry was made in India and was taken abroad while leaving the country. Import of gold is restricted not prohibited. The Applicant is not a frequent visitor and has no previous offences 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 absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Applicant



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has pleaded for redemption of the gold on fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 278.5 gms valued at Rs. 7,95,117/- (Rupees Seven lakhs Ninety Five thousand One hundred and Seventeen) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 2,80,000/- (Rupees Two lakhs Eighty 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. 70,000/- (Rupees Seventy thousand) to Rs. 55,000/- (Rupees Fifty Five 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.

(Signature)
20/7/18

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

ORDER No. 564/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 30.07.2018

ATTESTED

To,

Shri G. Vinayagamoorthy
c/o M/s L. K. Associates
"Time Tower" Room No. 5, II Floor,
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Egmore, Chennai- 600 008.

(Signature)
10/7/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ea.

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.

