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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. 373/343/B/14-RA / 267

Date of Issue 10/08/2018

ORDER NO. 580/2018-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 Nagoor Hanifa

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. 1408/2014 dated 01.08.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Nagoor Hanifa (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1408/2014 dated 01.08.2014 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 30.03.2014. He was intercepted and examination of his baggage resulted in the recovery of a gold chain weighing 116 gms valued at Rs. 3,18,754/- (Rupees Three lakhs Eighteen thousand Seven hundred and Fifty four) and one Samsung 46" LED TV.

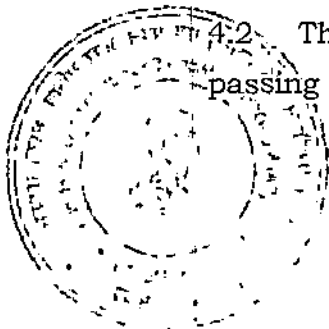
3. After due process of the law vide Order-In-Original No. 420/2014 Batch A dated 30.03.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 32,000/- under Section 112 (a) of the Customs Act, 1962, The Samsung TV was allowed on applicable customs duty.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1408/2014 dated 01.08.2014 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 on arrival proceeded to the red channel with an intention to declare and clear the impugned gold, however the gold was detained and the TV was released; The case referred to by the Appellate authority do not have common ground as regards to the facts of this case; In similar cases gold has been released on redemption fine and penalty and therefore this case cannot be treated differently; The import of gold is restricted but not prohibited; There are a plethora of decisions rendered by higher authorities permitting clearance of personal jewelry on payment of duty , fine and penalty, therefore it should have been allowed on redemption fine and penalty.

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



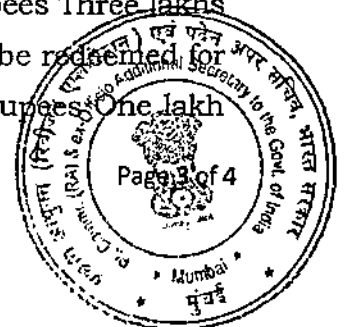
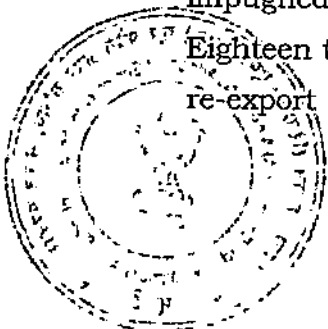
5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed and requested 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 goods 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 kept in his shirt pocket and it was not indigenously concealed. Import of gold is restricted not prohibited. There is no allegation that the applicant tried to pass through the green channel, in fact he was all along at the Red channel. 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 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 116 gms valued at Rs. 3,18,754/- (Rupees Three lakhs Eighteen thousand Seven hundred and Fifty four) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 1,20,000/- (Rupees One lakh



twenty 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. 32,000/- (Rupees Thirty two thousand) to Rs. 24,000/- (Rupees Twenty Four 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. 580/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30-07-2018

To,

Shri Nagoor Hanifa
c/o M/s L. K. Associates
"Time Tower" Room No. 5, II Floor,
169/84, Gengu Reddy Road,
Egmore, Chennai- 600 008.

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

(Signature)
10/8/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

