



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. 373/388/B/14-RA

Date of Issue 10/08/2018

ORDER NO. ⁵⁸⁷/2018-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 P. Mahendran

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. 1427/2014 dated 02.08.2014 passed by the
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri P. Mahendran (herein referred to as Applicant) against the order no 1427/2014 dated 02.08.2014 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 23.03.2014. He was intercepted in the green channel and examination of his baggage resulted in the recovery of a gold chain weighing 45 gms and valued at Rs. 1,23,660/- (Rupees One lakh Twenty three thousand Six hundred and sixty). After due process of the law vide Order-In-Original No. 373/2014 Batch D dated 23.03.2014 the Original Adjudicating Authority ordered confiscation of the 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 Rs. 60,000/- as redemption fine and imposed penalty of Rs. 5,000/- 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. 1427/2014 dated 02.08.2014 reduced the redemption fine from Rs. 60,000/- to Rs. 30,000/- and modified the order in original 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 is a bonafide passenger and brought the gold as professional fee for providing astrological advice to his friends and relatives in Singapore; The Applicant has not brought any restricted or prohibited goods, and the gold was brought for personal use; It is mandatory to allow redemption of the non prohibited goods under section 125 of the Customs Act,1962; The gold jewelry was kept open for examination and there was no concealment was detected by the officers; The gold brought by the applicant was in reasonable limits; It is a well settled principle that the quantum of penalty should also be proportionate to the role played by the individual;



4.2 The Revision Applicant cited case laws in his defense and prayed for reduction of redemption fine and penalty as deem fit in the interest of justice.

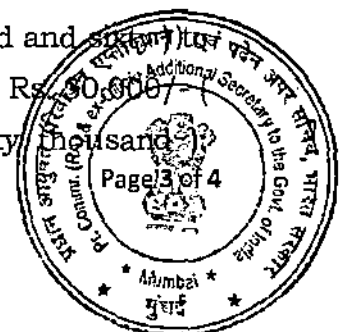
5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals and requested for re-export and a lenient view to be taken 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 goods is justified. However, the facts of the case state that the gold was worn by the Applicant and he had not concealed the impugned gold indigenously. The applicant was also intercepted before he cleared the green channel. The ownership of the gold is not disputed. There are no previous offences registered against the Applicant. 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.

7. 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.

8. The Applicant has pleaded for release of the gold on payments 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. Government allows the gold chain weighing 45 gms and valued at Rs. 1,23,660/- (Rupees One lakh Twenty three thousand Six hundred and sixty six) to be redeemed for re-export. The redemption fine is reduced from Rs. 30,000/- (Rupees Thirty thousand) to Rs. 20,000/- (Rupees Twenty thousand)



Government also observes that penalty of Rs. 5,000/- (Rupees Five thousand) imposed under section 112(a) of the Customs Act,1962 is appropriate.

10. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

9. So, ordered.

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

ORDER No. ⁵⁸⁷/2018-CUS (SZ) /ASRA/MUMBAI

DATED 25.07.2018

To,

Shri P. Mahendran
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

32/07/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

