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SPEED POST

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

F.No. 373/384/B/14-RA

Date of Issue 13/08/2018

ORDER NO. <sup>609</sup>/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 Kadher Riaz Ahamed

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. 1471/2014 dated 13.08.2014 passed by the  
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Kadher Riaz Ahamed (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1471/2014 dated 13.08.2014 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 24.04.2014. He was intercepted at the green channel and he was found carrying a gold bracelet weighing 164 gms valued at Rs. 4,29,759/- (Rupees Four lakhs Twenty Nine thousand Seven hundred and Fifty nine).

3. After due process of the law vide Order-In-Original No. 554/2014 Batch D dated 24.04.2014 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. 42,000/- 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. 1471/2014 dated 13.08.2014 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 was permitted to take the jewelry when leaving for Singapore; On his arrival he sought customs clearance for the same goods, however the goods were detained for payment of duty; The personal jewelry was worn by the Applicant and it not being a prohibited item were in reasonable limits in quantity; The gold was not concealed and there is no previous offence of the applicant; The Appellant authority has failed to consider that the Applicant is not a trader and the frequency of the travel has to be considered in proper perspective; The Applicant never crossed the green channel; Gold is neither prohibited nor restricted by eligible passengers; Gold jewelry worn by the Applicant cannot be considered a concealment if it was easily visible; The Commissioner (Appeals) should not have held mensrea when the worn gold was covered with a shirt and a declaration



was not made by the applicant; In the case of non-prohibited goods it is mandatory to order redemption of the goods; .

4.2 The Revision Applicant cited case laws in his defense and prayed for release of the gold for re-export on reasonable fine and penalty and 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 worn by the Applicant and it was not indigenously concealed. Import of gold is restricted not prohibited. 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 the redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

ADNUN HASRAKHAS  
Asst. Commissioner of Customs & Excise



9. The absolute confiscation of the gold is set aside. Government allows the gold totally weighing 164 gms valued at Rs. 4,29,759/- (Rupees Four lakhs Twenty Nine thousand Seven hundred and Fifty nine) is ordered to be redeemed for re-export on payment of redemption fine of Rs.1,65,000/- ( Rupees One lakh Sixty 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. 42,000/- (Rupees Forty two thousand ) to Rs.33,000/- ( Rupees Thirty three 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*  
25/7/18

(ASHOK KUMAR MEHTA)

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

ORDER No. <sup>609</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 25.07.2018

To,

Shri Kadher Riaz Ahamed  
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**

*Sankarsan Munda*  
13/8/18

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

