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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. 371/03/B/14-RA/1565

Date of Issue 21.09.2018

ORDER NO. 660/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 31.08.2018 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 Firdos S. Kumandan

Respondent : Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-345 & 346/13-14 dated 09.12.2013 passed by the Commissioner of Customs (Appeals), Mumbai - III.



ORDER

This revision application has been filed by Shri Firdos S. Kumandan (herein referred to as Applicant) against the Order in Appeal C. Cus No. MUM- CUSTM-PAX-APP-345 & 346/13-14 dated 09.12.2013 passed by the Commissioner of Customs (Appeals), Mumbai-III.

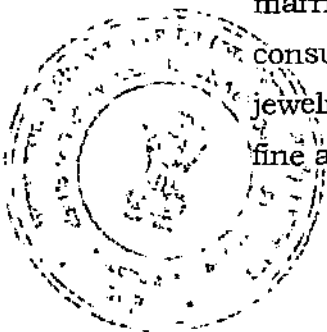
2. Briefly stated the facts of the case are that the applicant, arrived at the CSI Airport on 14.05.2012. He was intercepted and examination of his person resulted in the recovery of two gold bangles two gold kadas weighing 90 gms and one diamond ring 0.52 ct and 18 ct and US\$ 6400/- totally valued at Rs. 6,41,919/- (Rupees Six lakhs Forty one thousand Nine hundred and Nineteen). The gold was recovered from his baggage.

3. After due process of the law vide Order-In-Original No. ADC/AS/ADJN/73/2012-13 dated 31.01.2013 the Original Adjudicating Authority ordered confiscation of the gold and currency under Section 111 (d) and e, (l), (m) 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. 1,00,000/- and imposed penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 10,000/- under Section 114AA of the Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved by the said order, the Applicant filed an appeal before the Commissioner (Appeals) seeking re-export and reduction of fine and penalty. The Commissioner (Appeals) vide Order-In-Appeal MUM- CUSTM-PAX-APP-345 & 346/13-14 dated 09.12.2013 rejected the appeal of the Applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that

5.1 The Applicant is a US citizen since 1987 and had come to India for the purpose of his marriage and the gold was brought for gifting to his would be wife; He was not aware that he had to declare the gold, he however when asked produced bills and other documentary evidences; As the marriage was solemnized on 24.05.2012 releasing the gold for home consumption would not serve any purpose; Considering that the gold jewelry was his personal effects as per the baggage rules the redemption fine and penalty is uncalled for and unjustified; The Applicant being a



national is entitled to carry USD \$5000/- and was in excess of USD \$1400/-, Therefore confiscating the entire amount and imposing fine and penalty is unjustifiable and arbitrary.

5.2 The Revision Applicant prayed that the Honble Revisionary authority may be pleased to allow re-export of the gold, USD \$ 5000 be released unconditionally and set aside or reduce the redemption fine and personal penalty and render justice.

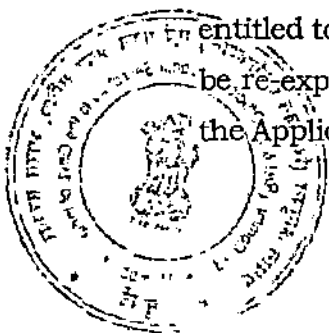
6. A personal hearing in the case was scheduled to be held on 16.08.2018, the Advocate for the respondent Shri N. J. Heera attended the hearing, she reiterated the submissions filed in Revision Application and pleaded for re-export of gold and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. A written declaration of goods and currency 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.

8. However, the facts of the case state that the Applicant is a US national and had not cleared the Green Channel. The impugned gold was carried in the Applicants baggage and it was not indigenously concealed. Import of gold is restricted not prohibited. There is no dispute regarding ownership of the gold. The Applicant is not a frequent traveler and there are no previous offences registered against the Applicant. 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 Original adjudicating authority has rightly allowed the release of the gold on payment of redemption fine and penalty.

(A) 10/02/2018/Inst 122A

9. The Applicant has pleaded that he had brought the gold as a gift for his to be wife and the marriage has already been solemnized on 24.05.2012 and as such allowing the gold for home consumption does not serve any purpose. The Applicant has also pleaded that confiscation of the entire US\$ 6400 when he is entitled to carry USD \$ 5000/-. The Applicant therefore has pleaded that the gold be re-exported on reduced fine and penalty. The Government also observes that the Applicant is a foreign national and he is not a frequent traveler in India. Under



the circumstances the Government is inclined to accept the plea for re-export. Government however observes that the redemption fine of Rs. 1,00,000/- and penalty of Rs. 50,000/- on gold valued at Rs. 3,02,439/- and US dollars valued at Rs. 3,39,480/- is too low in case the gold is allowed to be redeemed for re-export. The impugned Order in Appeal therefore needs to be set aside and the Order in original needs to be modified. Further, Government holds that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases.

10. The Government, allows re-export of the gold jewelry and US dollars totally value at Rs. 6,41,919/- (Rupees Six lakhs Forty one thousand Nine hundred and Nineteen) on payment of redemption fine of Rs. 1,50,000/- (Rupees One lakh Fifty thousand) and penalty of Rs. 60,000/- ( Rupees Sixty thousand). The penalty of Rs. 10,000/- ( Rupees Ten thousand ) imposed under section 114AA of the Customs Act, 1962 has been incorrectly imposed, the same is therefore set aside.

11. Revision application is partly allowed on above terms.

12. So, ordered.

*Ashok Kumar Mehta*  
21.8.18

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

ORDER No. 668/2018-CUS (WZ) /ASRA/Mumbai

DATED 31.08.2018

To,

Shri Firdos S. Kumandan  
C/o Shri N. J. Heera, Advocate  
Ground Floor, 41, Mint Road,  
Opp GPO,  
Fort, Mumbai-1.

**ATTESTED**

*S.R. Hirulkar*  
21.9.18

**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, CSI Airport, Mumbai.
2. The Commissioner of Customs (Appeals), Mumbai-III.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

