



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

F.No. 373/132/B/14-RA 1,220

Date of Issue 23.02.2018

ORDER NO. 68/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 23.02.2018 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 Naina Mohamed Arjis Shaik Abdul Kadar.

Respondent : Commissioner of Customs, Chennai.

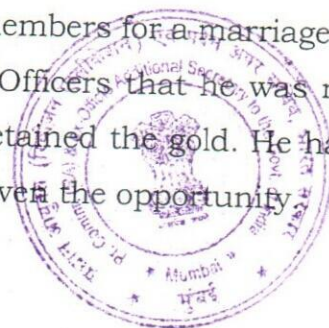
Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 265-268/200014 dated 20.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri. Naina Mohamed Arjis Shaik Abdul Kadar. (herein referred to as Applicant) against the order no 265-268/2014 dated 20.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Singapore national, arrived at the Chennai Airport on 01.05.2013. On arrival the Applicant was intercepted at the Green Channel while attempting to exit without baggage declarations at the Red Channel. Examination of his baggage resulted in the recovery of 28 gold chains weighing 137.8 gms totally valued at Rs. 3,59,577/-. As the applicant was not an eligible passenger to bring gold on concessional rate of duty, and as a proper declaration with regard to import of gold was also not made by him. The Assistant Commissioner of Customs, Airport vide Order-In-Original No. 701 Batch C dated 14.06.2013 ordered absolute confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 36,000/- under Section 112 (a) of the Customs Act, 1962.
3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 265-268/2014 dated 20.02.2014 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 appellate authority is against law, weight of evidence and circumstances and probabilities of the case.
 - 4.2. He did not go to the green channel at all. He was at the red channel all along under the control of officers.
 - 4.3 The seized gold jewelry was purchased out of his earnings and brought for his family members for a marriage ceremony of a close relative.
 - 4.4 He informed the Officers that he was ready pay appropriate custom duty. But the officers detained the gold. He had enough foreign currency to pay duty, but was not given the opportunity



4.5 There is no material evidence that the gold was brought for someone else.

4.6 The gold was kept in the pant pocket and was not concealed at all. He voluntarily showed it to the officers when asked in the arrival hall of the Airport.

4.7 He was earlier an Indian citizen, and therefore as a person of Indian origin, and having stayed abroad for sufficient time, he can avail concessional rate of duty as per Notification no. 03/2012 dated 16.01.2012.

4.8 An oral declaration of the gold was made to the officer and hence the question of declaration does not arise. Even assuming without admitting he had not declared the gold before the officers it is a technical fault and is pardonable. Secondly, CBEC Circular 09/2001 gives specific directions to the Customs officer that the declaration should not be blank, if not filled in by the passenger the officer will help them to fill the declaration card.

4.8 The Absolute confiscation of the gold and personal penalty imposed was high and unreasonable.

The Revision Applicant has cited various assorted judgments in support of his case, and prays for permission to re-export the gold bit on payment of nominal redemption fine and also reduce the personal penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

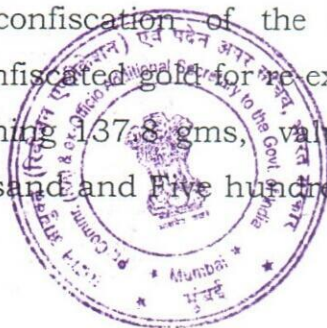
6. The Government has gone through the facts of the case. The Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. It is a fact that the gold was not declared by the passenger as required under Section 77 of the Customs Act, 1962 and if not intercepted he

would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, The Applicant was an Indian national who has taken up Singapore citizenship. The goods were not in commercial quantity and from the facts of the case it appears that the Applicant was carrying the gold jewelry in his trouser pocket when he was intercepted and it was not indigenously concealed. The facts of the case also state that the Applicant had not cleared the Green Channel exit. Being a person of Indian origin he is eligible for concessional rate of duty under notification 03/2012. 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, more so because he is a foreigner. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned gold is harsh and not justified.

8. As the applicant has requested for re-export of the confiscated gold, Government is inclined to accept the request. In view of the above mentioned observations, the Government also finds that a lenient view can be taken while imposing redemption fine and penalty upon 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. The impugned Order in Appeal therefore needs to be modified and the absolute confiscation in respect of the impugned gold is liable to be allowed for re-export.


9. Taking into consideration the foregoing discussion, Government modifies the order of absolute confiscation of the impugned gold. Government allows redemption of the confiscated gold for re-export in lieu of fine. The confiscation of the gold totally weighing 137.8 gms, valued at Rs. 3,59,577/- (Rupees Three lacs, Fifty nine thousand and Five hundred and seventy seven) is ordered to be



redeemed for re-export on redemption fine of Rs. 80,000/- (Rupees Eighty thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 36,000/- (Rupees Thirty six thousand) to Rs. 25,000/- (Rupees Twenty five thousand) under section 112(a) of the Customs Act, 1962.

10. The impugned Order in Appeal 265-268/2014 dated 20.02.2014 is modified as detailed above. Revision Application is partly allowed.

11. So, ordered.


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


ORDER No. 68/2018-CUS (SZ) /ASRA/mumbai

DATED 23.02.2018

To,

Shri. Naina Mohamed Arjis Shaik Abdul Kadar.
 C/o S. Palanikumar, Advocate,
 No. 10, Sunkurama Chetty Street,
 Opp High court, 2nd Floor,
 Chennai 600 001.

True Copy Attested


 23-2-18
 एस. आर. हिरुलकर
 S. R. HIRULKAR
 (A-C)

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.



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