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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. 373/100/B/14-RA/1230

Date of Issue 28.02.2018

ORDER NO. 72/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.02.2018 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 P. Sudhakar.

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. 69/2014 dated 24.01.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri P. Sudhakar (herein referred to as Applicant) against the order no 69/2014 dated 24.01.2014 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 26.06.2013. 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 and person resulted in the recovery of a gold chain weighing 96 gms totally valued at Rs. 2,39,263/-. After due process of the law vide Order-In-Original No. 728/2013 Batch C dated 26.06.2013 Original Adjudicating Authority 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. The Original Adjudicating Authority also imposed penalty of Rs. 24,000/- under Section 112 (a) of the Customs Act, 1962, duty extra.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 69/2014 dated 24.01.2014 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 erroneous bad in law, weight of evidence and probabilities of the case.

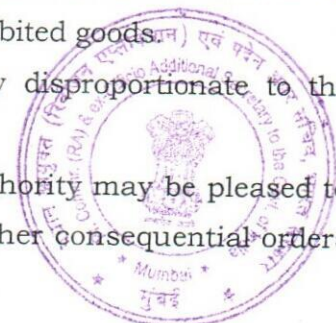
4.2. The Applicant was not aware that he was not eligible to bring gold chain. The Original Adjudicating Authority has held that one gold chain to be commercial quantity and it is erroneous.

4.3 The Applicant is not a frequent traveller and the gold chain was brought as he was to get married.

4.4 Assuming but not admitting that the gold chain was brought in spite of not being eligible, option of redeeming the same should have been extended under section 125 of the Customs Act 1962 as gold is not prohibited goods.

4.5 The quantum of penalty imposed was grossly disproportionate to the alleged offence.

The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities order and pass such other consequential orders and thereby render justice.

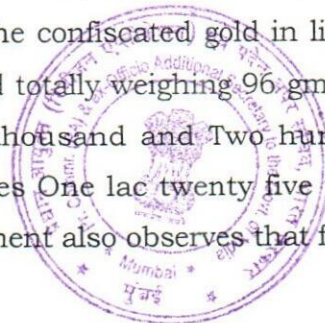


5. A personal hearing in the case was scheduled to be held on 14.02.2018, the Advocate for the respondent Shri K. Mohammed Ismail in his letter dated 12.02.2018 informed that his clients are unable to send their counsel all the way to Mumbai from Chennai and requested that the personal hearing may be waived and the grounds of the Revision Application may be taken as arguments for this Revision, and decide the cases as per relief sought for in the prayer of the Revision and oblige. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. He is ineligible to import gold on concessional rate under Notification No. 31/2003-Cus dated 01.03.2003. It is also a fact that a written declaration of gold was not made by the Applicant 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 facts of the case state that the Applicant had not cleared the Green Channel exit. This is the first offence of the Applicant. A single gold chain cannot be termed as commercial quantity. 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. Considering all factors, absolute confiscation of the gold chain is harsh and disproportionate. 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 Government is also of the opinion that a lenient view can be taken in the matter. The order of absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified and the confiscated gold chain is liable to be allowed for redemption on payment of redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government modifies the Order in Appeal. Government allows redemption of the confiscated gold in lieu of fine. The Redemption fine in lieu of confiscation of the gold totally weighing 96 gms, valued at Rs. 2,39,263/- (Rupees Two lacs, Thirty nine thousand and Two hundred and sixty three) is ordered to be Rs.1,25,000/- (Rupees One lac twenty five thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the



case justify reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 24,000/- (Rupees Twenty four thousand) to Rs.15,000/- (Rupees Fifteen thousand) under section 112(a) of the Customs Act,1962. The appropriate Customs duty leviable on the redeemed goods shall be required to be paid in accordance with the Customs Act,1962 and rules framed thereunder.

9. The impugned Order in Appeal No. 69/2014 dated 24.01.2014 is modified as detailed above. Revision Application is partly allowed.

10. So, ordered.

(Handwritten Signature)
27/1/14

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

ORDER No. 72/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.02.2018

To,

Shri. P. Sudhakar.
No. 2/14, West Street,
Koopachikkattai Post,
Mannarkudi,
Thiruvarur District.

True Copy Attested

(Handwritten Signature)
28.2.18

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.

