

REGISTERED
SPEED POST

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. 373/66/B/15-RA | 9/16

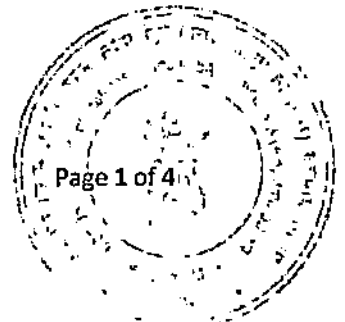
Date of Issue 27.11.2018

ORDER NO. 725/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21.09.2018 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 Srihari Jagata

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. 1880/2014 dated 14.10.2014 passed by the
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Srihari Jagata (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1880/2014 dated 14.10.2014 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 08.07.2014. He was intercepted and examination of his person resulted in the recovery of two gold bars weighing 174 gms valued at Rs. 4,47,577/- (Rupees Four lakhs Forty seven thousand Five Hundred and Seventy Seven). The gold was recovered from the baggage carried by the Applicant.

3. After due process of the law vide Order-In-Original No. 844/2014 Batch A 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. 44,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) application who vide Order-In-Appeal C. Cus No. 1880/2014 dated 14.10.2014 rejected the appeal of the Applicant.

5. The applicant has filed this Revision Application alongwith a condonation of delay Application pleading that the delay in filing the Revision Application by 52 days may be condoned as the Applicant had earlier filed an appeal before CESTAT. The Revision Application has been interalia on the following grounds that

5.1 The order of the authorities is not maintainable and bad in law; The Applicant was well within the Customs Area and did not attempt to leave the area before being cleared; The gold was not concealed to keep it hidden from a normal check; There was a failure of only non-declaration; The gold was not in commercial quantity; The gold was purchased from his savings; The entire proceedings were conducted without giving any legal assistance; Gold is not prohibited therefore redemption under section 125 should have been extended; The Appellate authority did not consider the Applicants plea and therefore acted in excess of their powers inspite of the fact that the Higher Courts and this Tribunal have given the option for redemption;



5.2 The Revision Applicant cited case laws in his defense and prayed for setting aside the Order in Appeal and release of the gold on redemption fine and setting aside the penalty in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 19.07.2018, 29.08.2018 and 20.09.2018. However, neither the Respondent nor his advocate attended the said hearing. Nobody from the department attended the personal hearing. The case is therefore being decided exparte on merits.

6. In the interest of justice, delay in filing this Revision application is condoned and revision application is decided on merits. The Government has gone through the facts of the case. A written declaration of gold 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 carried by the applicant in his pant pocket 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 absolute confiscation of the gold is harsh and unjustified and therefore, a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold for re-export on fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 174 gms valued at Rs. 4,47,577/- (Rupees Four lakhs



Forty seven thousand Five Hundred and Seventy Seven) is allowed to be redeemed for re-export on payment of redemption fine of Rs1,75,000/- (Rupees One lakh Seventy Five thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty of Rs. 44,000/- (Rupees Forty Four thousand) is reduced to Rs. 35,000/- (Rupees Thirty Five 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.

(Handwritten Signature)
21.9.18

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

ORDER No. 725/2018-CUS (SZ) /ASRA/MUMBAI

DATED 21.09.2018

To,

Shri Srihari Jagata
76-17-508 Near Achari Vaari Bldg.,
Urmila Nagar,
Vijayawada Krishna District,
Andhra Pradesh 520 012.

Copy to:

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

