



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 373/54/B/2015-RA

Date of Issue

28/11/2018

ORDER NO. ⁷⁵⁰2018-CUS (S Z) / ASRA / MUMBAI/ DATED 28.09.2018 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 Nissar

Respondent : Commissioner of Customs (Airport) Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 1678/2014 dated 11.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Nissar (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1678/2014 dated 11.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

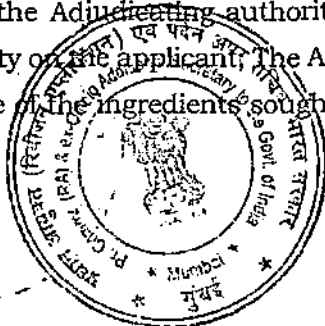
2. On 15.07.2013 the Applicant's brother Shri Prem Nazeer arrived at the Chennai Airport, he was intercepted as he was walking out through the green channel. Examination of his baggage and person resulted in the recovery of 10 gold coins weighing 79.7 grams valued at Rs. 2,01,720/- (Rupees Two lakhs one thousand Seven hundred and twenty) and one silver coloured gold chain weighing 114.9 gms valued at Rs. 3,10,804/- (Rupees Three lakhs Ten thousand Eight hundred and four). In addition to the above the Shri Prem Nazeer had brought four HTC phones valued at Rs. 68,000/- (Rupees Sixty eight thousand). The gold coins were recovered from his pant pockets and the gold chain was worn by the Applicant. Shri Prem Nazeer in his statement informed that the gold and the mobile phones were given to him by his younger brother Shri Nissar to be handed over to a friend in India.

3. After due process of the law vide Order-In-Original No. 244/03.04.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold coins and the gold chain under Section 111 (d) (l) and (m) of the Customs Act, 1962. The four HTC phones were also held liable for confiscation but allowed redemption of the phones on payment of Rs. 15,000/- and imposed penalty of Rs. 50,000/- on Shri Prem Nazeer and a penalty of Rs. 60,000/- was also imposed on Shri Nissar under Section 112 (a) of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the Applicant, filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1678/2014 dated 11.09.2014 rejected the appeal of the respondent.

5. Aggrieved with the above order the Applicant, Shri Nissar has filed this revision application alongwith a condonation of delay Application pleading condonation of late filing of the Revision Application by 27 days interalia on the grounds that;

5.1 The Order of the original adjudicating authority and the order of the Commissioner (Appeals) are both contrary to the law and probabilities of the case; the applicant was not given any show cause notice for imposition of penalty, whereas, the Adjudicating authority while passing Order-in-original had imposed penalty on the applicant. The Adjudicating authority failed to note that in the absence of the ingredients sought to be penalized, not being set out



in the Show Cause notice the same is not valid in law; The Commissioner failed to note that the order did not disclose any contemporaneous conduct on the part of the applicant warranting imposition of penalty; penalty cannot be imposed without mensrea and there is no evidence shown in the order in original to prove any culpability of the applicant in importing the goods and since nothing has been proved against the applicant that he had imported the goods with an ulterior motive and the case against him has not been proved beyond reasonable doubt. the Adjudicating authority in his order had accepted that there is no evidence on the part of the applicant in the involvement of the said act done by the importer and hence, he must not imposed penalty on the applicant; no opportunity was given to the applicant to rebut any allegation against the applicant for imposing penalty.

5.2 The Revision Applicants cited case laws in support of their case and prayed that the order of the Appellate authority be set aside or other orders as deemed fit.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled on 17.07.2018, 20.08.2018 and 10.09.2018. However, neither the Applicant nor the department attended the said hearing. The case is therefore being decided exparte on merits.

7. The Government has gone through the case records. In the interest of justice, delay of 27 days in filing this Revision application is condoned and revision application is being decided on merits. it is observed that the only relief sought for by the Applicant is the setting aside of the imposition of penalty. Government observes that the impugned gold and the mobile phones were seized from the possession of the Applicants brother Shri Prem Nazeer who arrived at the Chennai Airport. In his statement recorded before the Customs Authorities Shri Prem Nazeer deposed that the said gold and the mobile phones were given to him by his younger brother Shri Nissar, the impugned Applicant to be handed over to a friend in India. The Appellate order also notes that the Applicant, in his letter dated 17.03.2014 has admitted that the gold coins and the silver coated gold chain and the phones were handed over to Shri Prem Nazeer by himself. The Government further observes that the gold chain was silver coated thus revealing the intent of the applicant to smuggle the same into India without the payment of duty. This clearly reveals the contemporaneous conduct on the part of the applicant. The Government therefore is inclined to agree with the Order-in-



Appeal upholding the imposition of penalty on the Applicant. The impugned Order-in-Appeal therefore needs to be upheld and the Revision Application is liable to be rejected.

8. The Government upholds the imposition of penalty on the Applicant. Revision application is accordingly dismissed.

9. So, ordered.

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

ORDER No. 750/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.09.2018

To,

1. The Commissioner of Customs, (Airport) Chennai,
New Custom House,
Chennai-600 001.
2. Shri Nissar
C/o Shri A. K. Jayaraj, Advocate,
Old No. 2, New No. 3, Thambusamy Road,
1st Floor, Kilpauk,
Chennai 600 010.

Copy to:

3. The Commissioner of Customs (Appeals), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.





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

F.No. 373/430/B/14-RA / 27/11/18

Date of Issue 27.11.2018

ORDER NO. ⁸⁶⁵/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.09.2018 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 Hayath Badhusha Haja Amarudeen

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. 1670/2014 dated 11.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Hayath Badhusa Haja Amarudeen (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1670/2014 dated 11.09.2014 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 one Sony handy camera valued at Rs. 1,25,000/- (One lakh Twenty Five thousand) and four gold chains and two gold dollars with pendant weighing 181 gms valued at Rs. 4,56,301/- (Rupees Four lakhs Fifty six thousand Three Hundred and one). The gold was recovered from the pockets of the pants worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 81/29.01.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold and the Sony handy camera 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. 50,000/- 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. 1670/2014 dated 11.09.2014 rejected the appeal of the Applicant.

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

5.1 The order of the authorities are against the law weight of evidence and probabilities of the case; The Commissioner (Appeals) has erred in upholding the absolute confiscation of the gold and camera; The Applicant had not carried the goods for another person and had come to India from Singapore to visit his ailing mother; The absolute confiscation is uncalled for and unwarranted in the facts and circumstances of the case; absolute confiscation is attracted only in cases of smuggling ; The Sony handy camera cannot be concealed and the gold was kept in the Applicants pant pockets; The Applicant never crossed the



Green channel; The Applicant has been staying in Singapore for the past 7 years; The gold being personal should have been released on redemption fine and penalty; If the gold chain is confiscated the Applicant will be put at a very irreparable loss and hardship; The Applicant may be allowed to take the gold and camera back to Singapore and the gold may be allowed to be re-exported.

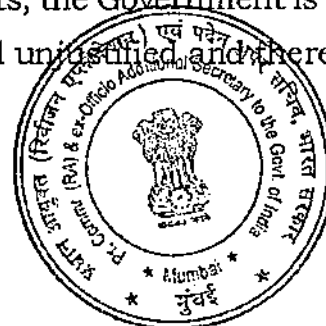
5.2 The Revision Applicant prayed for setting aside the Order in Appeal and release of the gold without redemption fine and penalty or pass such order as deem fit in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 28.09.2018. Kumar Shri Abdul Nazeer , Advocate for the Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for re-export and cited the decisions of GOI/Tribunals 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 proper 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 pockets 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 and Sony Handy Camera on payment of redemption fine and penalty for re-export and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be set aside.

9. The Government sets aside the absolute confiscation of the gold and Sony handy Camera. The impugned gold weighing 181 gms valued at Rs. 4,56,301/- (Rupees Four lakhs Fifty six thousand Three Hundred and one) and Sony handy Camera valued at Rs. 1,25,000/- (One lakh Twenty Five thousand) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 2,00,000/- (Rupees Two Lakhs) 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. 50,000/- (Rupees Fifty thousand) to Rs. 40,000/- (Rupees Forty thousand) under section 112(a) of the Customs Act,1962.

11. So, ordered.

Ashok Kumar Mehta
28/9/18

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

ORDER No. ⁸⁰⁵/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.09.2018

To,

Shri Hayath Badhusa Haja Amarudeen
c/o Shri Abdul Nazeer Advocate.
65, Baracah Road, Varadamma Garden Street,
Kilpauk,
Chennai – 600 010.

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.
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