

373/224/B/14-RA

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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
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F.No. 373/224/B/14-RA/1243

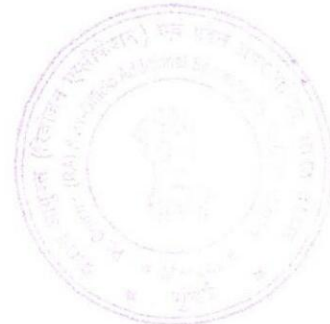
Date of Issue 05.03.2018

ORDER NO. 79/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.02.2018 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. Rajoo Nagaraj

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 672/2014 dated 11.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri. Rajoo Nagaraj (herein referred to as Applicant) against the order in Appeal no 672/2014 dated 11.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, a Singaporean national arrived at the Chennai Airport on 18.12.2012. Examination of his hand baggage resulted in the recovery of assorted gold jewelry totally weighing 521.87 gms valued at Rs. 15,19,164/-. The Applicant was arrested and was remanded to judicial custody. The Original adjudicating Authority vide Order-In-Original No. 911 dated 24.12.2013 ordered absolute confiscation of the impugned goods under Section 111 (d) and (l) of the Customs Act 1962, read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 1,50,000/- 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. 672/2014 dated 11.04.2014 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 Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case.

4.2 He is of Indian origin, but a citizen of Singapore, that the impugned gold was purchased out of his own earnings through credit cards and cash for his family and he had come to attend his sisters daughters marriage. That having come to India after a prolonged stay he is eligible to import one kilogram of gold at a concessional rate.

4.3 He expressed his willingness to pay appropriate duty to the customs officers however it was not considered.



4.5 Arrest and prosecution is not warranted for non-declaration. As per the Hon'ble Supreme Court (full bench) order in the case of Om Prakash vs UOI the order categorically states that the main objective of the said Act was to recover duties and not really to punish for infringement of its provisions.

4.5 He did not pass through the green channel. He was all along at the red channel under the control of the Customs Officers. The seized gold was not concealed but kept in his laptop bag and pant pockets.

4.6 The respondent did not consider his request to take back the gold jewelry for re-export.

4.7 As per section 132 of the Customs Act, 1962 a false declaration is punishable, however the above section will not apply to non declaration. 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.

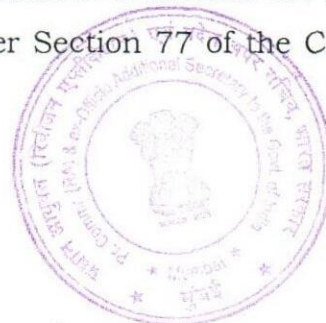
4.8 The absolute confiscation of the gold was unreasonable and the personal penalty imposed was very high.

The Revision Applicant also cited various assorted judgments in support of his case, and being the only bread winner having school going children prayed for permission to re-export the gold jewelry on payment of nominal redemption fine and 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 in 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 case records it is seen the gold jewelry was not declared by the passenger as required under Section 77 of the Customs Act,

Signature



1962. The Applicant had kept the gold in his hand baggage and was not ingeniously concealed and did not reveal it to the officers inspite of questioning. If he was not intercepted before the exit, the Applicant would have taken out the gold jewelry without declaration. Hence the confiscation of the gold is justified.

7. However, Applicants ownership of the gold jewelry is not disputed. The gold was not in primary form. The facts of the case also state that the Applicant had not cleared the Green Channel exit and was intercepted before the exit. The gold was purchased from his own earnings. The impugned gold was not ingeniously concealed. With regards to the declaration, the CBEC Circular 09/2001 gives specific directions to the Customs officer as follows, *"It may be ensured that every passenger reporting at Red Channel fill up a Disembarkation Card clearly mentioning therein the quantity and value of goods that he has brought, and hand over the Customs portion of the card to the officer on duty at the red Channel. In case the same is incomplete/not filled up, the proper Customs officer should help record the O.D of the passenger 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 if he is a foreigner. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned gold is not justified.

8. As the applicant has pleaded for re-export of the confiscated gold, Government is inclined to accept the plea. 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 order of absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified, the confiscated gold jewelry is liable to be allowed for re-export on payment of redemption fine.

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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 bracelet for re-export in lieu of fine. The confiscation of the gold jewelry totally weighing 521.87 gms, valued at Rs. 15,19,164/- (Rupees Fifteen lacs nineteen thousand one hundred and sixty four) is ordered to be redeemed for re-export on payment of redemption fine of Rs.6,00,000/- (Rupees Six lacs) 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. 1,50,000/- (Rupees One lac fifty thousand) to Rs.1,25,000/- (Rupees Noe lac twenty five thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal 672/2014 dated 11.04.2014 is modified as detailed above. Revision Application is partly allowed.

11. So, ordered.

Ashok Kumar Mehta
28.2.18

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

ORDER No. 79/2018-CUS (SZ)/ASRA/MUMBAI

DATED 28.02.2018

To,

True Copy Attested

Shri. Rajoo Nagaraj
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
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Chennai 600 001.

S. R. Hirulkar
5-3-18

एस. आर. हिरुलकर
S. R. HIRULKAR

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.



