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SPEED POST

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

F.No. 373/219/B/15-RA / 2093

Date of Issue 28.11.2018

ORDER NO. 804/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 17.09.2018 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 Yasser Arafat Peer Mohamed

**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. 51 & 52/2015 dated 23.02.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Yasser Arafat Peer Mohamed (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 51 & 52/2015 dated 23.02.2015 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 24.12.2014. He was intercepted and examination of his person resulted in the recovery of one gold chain weighing 120 grams valued at Rs. 3,03,405/- ( Rupees Three lakh Three thousand Four hundred and five), 100 T-Shirts valued at Rs. 10,000/-/- (Rupees Ten thousand) and two 42" LED TVs.

3. After due process of the law vide Order-In-Original No. 1558/2014 dated 24.12.2014 the Original Adjudicating Authority ordered confiscation of the 100 T-Shirts, but allowed to redeem the same on payment of Rs. 5,000/- . The gold chain was absolutely confiscated 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. 32,000/- under Section 112 (a) of the Customs Act, 1962. The two TVs were allowed on applicable duty.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) application who vide Order-In-Appeal C. Cus No. 51 & 52/2015 dated 23.02.2015 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 chain, simply because another passenger had brought similar goods, without assigning any proper reasons; The Applicant, therefore is entitled to get release of the goods on redemption fine and penalty; The Applicant has neither mis declared the gold nor concealed the same in any manner and therefore the appeal should have been allowed; The gold chain was not brought for commercial consideration: The learned Commissioner also erred in imposing heavy penalty; If the gold is confiscated absolutely the Applicant will be put to and irreparable loss and hardship; The Applicant may be

allowed to take the gold back to Bangkok and the gold may be allowed to be re-exported.

5.2 Alternatively, the Revision Applicant prayed for setting aside the Order in Appeal and release of the gold without redemption fine and penalty for re-export and 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. 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 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 chain. The impugned gold weighing 120 grams valued at Rs. 3,03,405/- ( Rupees Three lakh Three thousand Four hundred and five) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 1,00,000/- ( Rupees One lakh ) 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. 32,000/- ( Rupees Thirty two thousand ) to Rs. 20,000/- ( Rupees Twenty thousand ) under section 112(a) of the Customs Act,1962.

10. So, ordered.



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

ORDER No. 809/2018-CUS (SZ) /ASRA/

DATED 17.09.2018

To,

Shri Yasser Arafat Peer Mohamed  
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.
5. Spare Copy.