



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. 373/34/B/17-RA/2097

Date of Issue 28.11.2018

ORDER NO. 812/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 18.10.2018 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 Murugavel Sethuraman

Respondent : Commissioner of Customs, Tiruchirapalli.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 69/2017-TRY (CUS) dated 30.10.2017 passed by the Commissioner of Customs (Appeals), Tiruchirapalli.

ORDER

This revision application has been filed by Shri Murugavel Sethuraman (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 69/2017 -TRY (CUS) dated 30.10.2017 passed by the Commissioner of Customs (Appeals), Tiruchirapalli.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 14.09.2015. He was intercepted when crossing the Green Channel and examination of his person resulted in the recovery of one gold chain weighing 92 gms valued at Rs. 2,25,952/- (Rupees Two lakhs Twenty five thousand Nine hundred and Fifty two). The gold was recovered from the pant pocket of the Applicant. In his statement he revealed that the gold was given to him in the Aircraft by another passenger.

3. After due process of the law vide Order-In-Original No. TCP-CUS-PRV-JTC-16 dated 19.10.2016 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. 22,000/- 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. 69/2017-TRY (CUS) dated 30.10.2017 rejected the Appeal of the Applicant.

5. 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; Gold is a restricted item and not prohibited goods; The Appellate authority has simply glossed over the judgements and the points raised in the appeal grounds and reason has been given to reject the Appeal; The applicant has retracted the statement given, at the very first instant; There is no specific allegation that he had tried to cross the green channel; There is no previous case registered against him; The gold was purchased from his own earnings and gave the receipts to the customs officers; The seized gold chain is made in India and is for personal use; The Applicant is a gold smith by profession and he came along with his wife for a family function and the gold chain was worn by his wife; The chain was not received from any third party; In the case of Vigneswaran vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner, observing that only because of not declaring the gold, the

absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application pleaded for re-export and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. It is a fact that the gold was not declared 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 was intercepted before he even attempted to exit the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold was carried by the Applicant in his pant pocket and it was not ingeniously concealed. There are no previous offences registered against the Applicant. 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.

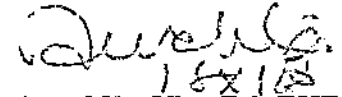
8. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The absolute confiscation of the gold is therefore harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and the Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.

9. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold bars weighing 92 gms valued at Rs.

2,25,952/- (Rupees Two lakhs Twenty five thousand Nine hundred and Fifty two) is ordered 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. 4,50,000/- (Rupees Four lakhs Fifty thousand) to Rs. 22,000/- ( Rupees Twenty Two thousand) under Section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms

10. So, ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 812/2018-CUS (SZ) /ASRA/

DATED 18.10.2018

To,

Shri Murugavel Sethuraman  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

Copy to:

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