



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. 373/75/B/18-RA

2106

Date of Issue

28.11.2018

ORDER NO. 824/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 22.09.2018 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 F. Ubaithullah Khan

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.198-200/2017 dated 26.12.2017 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri F. Ubaithullah Khan (herein after referred to as the "Applicant") against the order in Appeal No. 198-200/2017 dated 26.12.2017 passed by the Commissioner of Central Excise (Appeals) Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 30.09.2017. Examination of his baggage resulted in recovery of perfumes, cigarettes and cosmetics, which were held to be in commercial quantity as detailed below;

Sl. No.	Description of Goods	Quantity	Amount (in Rs.)
1	Whey Protein powder	08	19,200/-
2	Gudang Garam Cigarettes	4800	48,000/-
3	Axe Oil	300	6,000/-
4	Old Dell Laptops	07	70,000/-
5	One gold chain	69 grams	1,86,370/-
		TOTAL	3,29,570/-

3. The Original Adjudicating Authority, vide its Order in Original No. 511/2017 Batch A dated 30.09.2017 confiscated the goods viz Axe oil and old Dell laptops valued at Rs. 76,000/- allowing it to be redeemed on payment of Rs. 38,000/- and absolutely confiscated the gold chain, cigarettes and Whey protein powder valued at Rs. 2,53,570/- under Section 111 (d), (l), (o) and (m) of the Customs Act, 1962. A penalty of Rs. 5,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals). Commissioner of Central Excise (Appeals) Chennai, vide his Order-in-Appeal No 198-200/2017 dated 26.12.2017 reduced the redemption fine to Rs. 19,000/- rejected the rest of the appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that.

5.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; 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 never passed through the green channel was all along at the red channel under the control of the officers; The Applicant was wearing the gold jewelry and therefore the question of baggage rules does not arise; The ownership of the gold is not disputed; ; Gold is a restricted item and not prohibited goods; The laptops are old and they have been valued on the higher side; The Applicant has arrived after a stay of 5 days and yet the free allowance has not been extended.

5.3 The Revision Applicant cited various judgments in support of his case and prayed for setting aside the Order and reduce the redemption fine and personal penalty and thus render justice.

6. 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 and cited the decisions of GOI/Tribunals where option for re-export of the goods was allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. The items except the gold chain were all in commercial quantities and under the circumstances confiscation of the goods is justified. However, the facts of the case state that the Applicant had not cleared the Green Channel. The gold chain was worn by the Applicant and it was not ingeniously concealed. The goods were also recovered from his baggage and they were not indigenously concealed. The Applicant was not involved in any offences earlier and it was not a hardcore attempt to smuggle the goods into India. 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 of the gold and redemption of other items and the Government is inclined to accept the plea. The order of absolute confiscation of the goods in the impugned Order in Appeal therefore needs to be modified.

9. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold chain and the other items totally valued at Rs. 2,53,570/- (Rupees Two lakhs Fifty three thousand Five hundred and Seventy) is ordered to be redeemed on payment of redemption fine of Rs1,00,000/- (Rupees One lakh) under section 125 of the Customs Act, 1962. Government observes that the penalty under section 112(a) of the Customs Act, 1962 imposed on the Applicant is appropriate.



10. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

11. So, ordered.

Ashok Kumar Mehta
22/9/18

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

ORDER No. 824/2018-CUS (SZ) /ASRA/

DATED 22.09.2018

To,

Shri F. Ubaithullah Khan
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai 600 001.

Copy to:

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

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

