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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. 371/22/B/2015-RA/194<sup>3</sup> Date of Issue 19.11.2018

ORDER NO. 844 /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 25.10.2018  
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 Ahmed Labee Alawudeen

Respondent : Commissioner of Customs, CSIA, Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM/CUSTM/PAAX/APP/31/15-16 dated 10.4.2015  
passed by the Commissioner of Customs (Appeals),  
Mumbai-III.



ORDER

This revision application has been filed by Shri Ahmed Labee Alwudeen (herein referred to as Applicant) against the Order in Appeal No. Mum-Custrm-Pax-App-31/15-16 dated 10.4.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III. .

2. Briefly stated the facts of the case are that the applicant, along with his wife and two daughters arrived at the CSIA, Mumbai on 14.01.2014. They cleared themselves through green channel after which the personal gold jewellery worn by the 3 women passengers totally weighing 1240 grams valued at Rs. 30,30,708/- (Rupees Thirty Lakhs Thirty Thousand Seven Hundred and Eight Only) were seized by the Customs Officers as they appear to have violated the provisions of Customs Act, 1962 as detailed above :-

Sr. No	Name of the Passenger	Description of Jewellery	Description of Goods & Value (Rs)
1	Mrs Balkees Alawudeen	04 Gold Bangles & one chain with pendent	535 gms Rs.13,07,604/-
2	Ms Fatoma Sumya Alawudeen	02 Gold Bangles & one chain with pendent	352 gms Rs. 8,60,330/-
3	Ms Fatoma Aameela Alawudeen	02 Gold Bangles & one chain with pendent	353 gms Rs. 8,62,774/-

3. The goods under seizure i.e. gold jewellery weighing 1240 grams valued at Rs. 30,30,708/- (Rupees Thirty Lakhs Thirty Thousand Seven Hundred and Eight Only) were tested and assayed on 23.04.2014 under Panchanama, by Government Approved Valuer Mr Bharat S. Mandalia of M/s Soni Shivilal Bros. Jewellery, Mumbai who vide report No. dated 23.04.2014 described the impugned goods as plain gold Jewellery of weight 1242 grams and valued at Rs. 32,69,565/- (Rupees Thirty Two Lakhs Sixty Nine Thousand Five Hundred and Sixty Five Only) which was accepted by the Joint Commissionr of Customs, AIU vide order dated 25.04.2014.



4. After due process of the law, the Additional Commissioner of Customs, CSIA, Mumbai vide Order-In-Original No. ADC/ML/ADJN/62/2014-15 dated 17.09.2014 ordered absolute confiscation of the impugned crude gold jewellery totally weighing 1242 grams valued at Rs. 32,69,565/- (Rupees Thirty Two lakhs Sixty Nine Thousand Five Hundred and Sixty Five only) under Section 111 (d), (l) and (m) of the Customs Act, 1962 and also imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) each on the applicant, his wife and two daughters under Section 112(a) & (b) of the Customs Act, 1962.

5. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM/CUSTM/PAAX/APP/31/15-16 dated 10.4.2015 holding that as per the valuer's report as in para 1, he opined the same as "Plain Jewellery". He further upheld the order absolute of confiscation of the lower authority and that the adjudicating authority had already taken a lenient view and that there was no new ground for consideration, hence the same does not require further interference:

6. The applicant then has filed this Revision Application inter alia on the following grounds that :

6.1 The Applicant and his family are Srilankan citizens holding Srilankan passports. The issue in this case is whether the Customs Act, 1962 and the Baggage Rules, 1998 prohibit foreign tourists entering India from bringing their personal gold ornaments and whether they are bound to declare to the Customs on their arrival about the gold ornaments worn by them on their person or carried by them and in the event of non-declaration whether they are liable for confiscation.

6.2 In the course of the interception, search and seizure operations, the applicants were made to sign the statements of the nature the officers liked to record. The said confessional statements dated 14.01.2014 cannot bind them since they had retracted their statements



immediately on 17.01.2014 by letter addressed to the Asstt. Commissioner of Customs, AIU, CSIA, Mumbai. More over since there is no corroborative evidence or materials on record to demonstrate the fact that the facts recorded in the statements were correct, there is no question as to why retraction should not be allowed.

- 6.3 The goods seized from the applicant were neither crude jewellery not gold/gold bullion of 24 carats and was not concealed. They proved that they were plain gold jewellery of purity less than 24 carats and was of their used personal effects and were not for sale. There was no corroboration evidence.
- 6.4 The goods were not prohibited and they were not dutiable. The goods seized were not in commercial quantity and were not for sale. There was no mis-declaration or non-declaration and the panchanama was invalid
- 6.5 The applicants being tourists are eligible to import their used personal jewellery without payment of duty. The women were all wearing the said jewellery and no jewellery boxes were seized by them As the goods were not dutiable, they were not required to declared the gold jewellery to Customs on their arrival.
- 6.6 The Commissioner of Customs(Appeals) also accepted and considered the good as plain jewellery. The Government Approved valuer did not certify the gold jewellery as new.
- 6.6 The Addl. Commissioner of Customs, CSIA, Mumbai relied upon the decision of Madras High Court in the case of Aiyakannu Vs Joint Commissioner of Customs and the Commissioner(Appeals) in his order holding that the said decision in the case of Aiyakannu is squarely applicable to their case. The decision in the case of Aiyakannu Vs Joint Commissioner of Customs cannot be compared with and made applicable in their case as Shri Aiyakannu was carrying gold bars concealed in carbon paper and had brought the gold to sell it for profit in India. Whereas in their case the jewellery



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were not in commercial quantity, was not concealed and were the personal effects of the 3 women. As per the test and valuation certificate issued by Government Approved Valuer the jewellery were plain gold jewellery of less than 24 carat purity.

6.7 They cited various assorted judgments and Boards policies in support of allowing re-export of the gold on payment of nominal redemption fine and reduced personal penalty.

6.8 They prayed their a reasonable order may be passed for release of the confiscated goods for re-export and render justice.

7. A personal hearing in the case was scheduled to be held on 27.09.2018. Shri Prakash Shingrani, Advocate for the Applicant attended the hearing. The Applicant pleaded ,that since passengers were wearing the jewellery, taking a lenient view the confiscated goods be allowed for re-export on payment of redemption fine and penalty and Revision Application be allowed.

8. Government has gone through the facts of the case. It is a fact that gold jewellery 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.

9. However, the facts of the case state that the Applicant, along with his wife and two daughters cleared themselves through green channel, after which the personal gold jewellery which was worn in person by the 3 women passengers where seized. Here the gold 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 Custom officer should help the passenger records 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.

10. 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 confiscated of the gold in the impugned Order-in-Appeal therefore needs to be modified and the confiscated gold Jewellery is liable to be allowed for re-export on payment of redemption fine and penalty.

11. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold Jewellery for re-export in lieu of fine. The gold jewellery totally weighing 1242 grams valued at Rs. 32,69,565/- (Rupees Thirty Two lakhs Sixty Nine Thousand Five Hundred and Sixty Five only) is ordered to be redeemed for re-export on payment of redemption fine of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) 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 Mr. Ahamed Lebbe Alawudeen, Mrs Balkees Alawudeen, Ms Fathima Sumiya Alawudeen and Ms Fathima Aameela Alawudeen are therefore reduced from Rs, 1,00,000/- (Rupees One Lakh Only) each passenger to Rs.75,000/- (Rupees Seventy Five Thousand Only) each per passenger under Section 112(a) of the Customs Act, 1962.

12 The impugned Order-in-Appeal No.MUM/CUSTOM/PAAX/APP/31/15-16 dated 10.04.2015 stands modified to the above extent. Revision Application is partly allowed on above terms.



2015

13. So, ordered.

*Ashok Kumar Mehta*  
25/10/18

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

ORDER No. 844/2018-CUS (SZ) /ASRA/Mumbai DATED 25-10-2018

To,

Mr. Ahamed Lebbe Alawudeen,  
C/s Shri Prakash Shingrani Advocate,  
123, Himalaya House, 79 Paitan Road,  
CST, Mumbai 400 001.

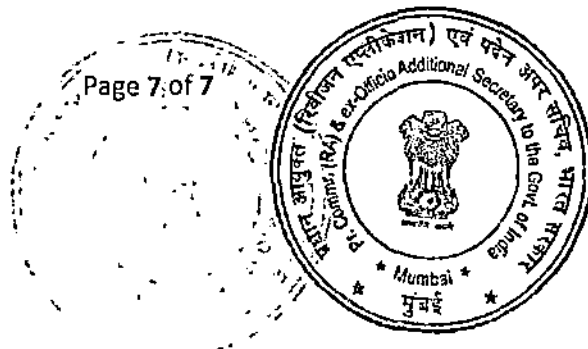
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1. The Commissioner of Customs, CISA, Mumbai.
2. The Commissioner of Customs (Appeals), Mumbai-III.
3. Sr. P.S. to AS (RA), Mumbai.
- ✓ 4. Guard File.
5. Spare Copy.

**ATTESTED**

*S.R. Hirulkar*  
19/11/18

**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)



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