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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/61/B/2018-RA

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Date of Issue

29.11.2018

ORDER NO. 888/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29.10.2018 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. S. Manoharan

Respondent : Commissioner of Customs, (Airport), Tiruchirapalli.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
76/2018-TRY(CUS) dated 30.10.2017 passed by the
Commissioner of Cus and C. Ex. (Appeals), Tiruchirapalli.

ORDER

This revision application has been filed by Shri S. Manoharan (herein after referred to as the Applicant) against the order in Appeal no C. Cus No 76/2017-TRY(CUS) dated 30.10.2017 passed by the Commissioner of Customs (Appeals), Tiruchirapalli.

2. On 21.01.2017 the Applicant, a Sri Lankan National, arrived at the Trichy Airport. Examination of his person resulted in the recovery of one gold chain weighing 79 gms valued at Rs. 2,13,989/- (Rupees Two lakhs Thirteen thousand Nine hundred and Eighty nine).
3. After due process of the law vide Order-In-Original No. 06/2017 dated 21.01.2017 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (1) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 25,000/- under Section 112 (a) of the Customs Act, 1962.
4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 76/2017-TRY(CUS) dated 30.10.2017 reduced the penalty to Rs. 10,000/- imposed under section 112 (a) of the Customs Act, 1962 and partially allowed the Appeal of the Applicant.
5. Aggrieved with the above order the Applicants have filed this revision application inter alia on the grounds that;
 - 5.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; Gold is not a prohibited item and according to liberalized policy can be released on redemption fine and penalty; There are no specific allegations that the Applicant tried to cross through the Green Channel and was all along at the red channel under the control of the officers; The Appellate authority has simply glossed over the judgements and the points raised in the appeal grounds and no reason has been given to reject the Appeal; The gold chain was shown to have recovered from his pant pockets, however the gold chain was worn by the Applicant on his neck and it was removed on the instructions of the officers, the CCTV footage will ascertain the truth; Ownership of the gold is not disputed and there is no ingenious concealment; The gold was purchased from his own earnings and the same is his personal belongings; In the case of Vigneswaran vs U01 in W.P. 6281 of 2014 (I) dated 12.03.2014 has directed the revenue to

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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.; The adjudicating authority failed to appreciate the difference between complete prohibition and restriction.

5.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and allow the gold for re-export on redemption fine and penalty and thereby 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 pleaded that the redemption fine and penalty be reduced. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the gold chain was recovered from the respondents pant pockets and it was not declared by the Respondent and therefore, confiscation of the gold is justified. However the gold was not indigenously concealed, in fact the Applicant claims that the gold chain was worn by him and it was removed on the instructions of the officers. Ownership of the gold is not disputed. Import of gold is restricted not prohibited. There are no instances of any previous offences on behalf of the respondent. 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, moreso because he is a foreign citizen.

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 opines 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 for re-export on fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

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9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 79 gms valued at Rs. 2,13,989/- (Rupees Two lakhs Thirteen thousand Nine hundred and eighty nine) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 80,000/- (Rupees Eighty thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty imposed. The penalty of Rs. 10,000/- (Rupees Ten thousand) imposed under section 112(a) of the Customs Act, 1962 is appropriate.

9. 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. ⁸⁸⁸/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.10.2018

To,

Shri. S. Manoharan.
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), Tiruchirapalli.
2. The Commissioner of Cus and C. Ex. (Appeals), Tiruchirapalli.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.