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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. 373/168/B/14-RA | 1266

Date of Issue 07.03.2018

ORDER NO. 89/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 06.03.2018 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 Mohamed Rilwan

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 No. 464/2014 dated 14.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Mohamed Rilwan (herein referred to as Applicant) against the order no 464/2014 dated 14.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen arrived at the Chennai Airport on 22.11.2013. On arrival the Applicant was intercepted at the Green Channel while attempting to exit without baggage declarations at the Red Channel. Examination of his baggage and person resulted in the recovery of a gold chain weighing 123 gms totally valued at Rs. 3,23,647/-. After due process of the law vide Order-In-Original No. 1368/2013 Batch B dated 22.11.2013 Original Adjudicating Authority ordered absolute confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. The Original Adjudicating Authority also imposed penalty of Rs. 33,000/- under Section 112 (a) the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No.464/2014 dated 14.03.2014 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the following grounds that;

4.1. The order of the appellate authority is bad in law, weight of evidence and probabilities of the case.

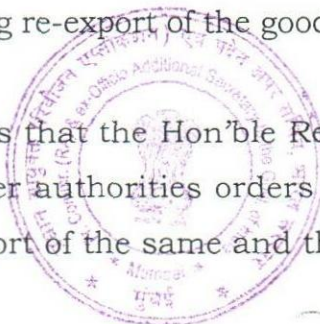
4.2. Both the Respondents failed to see that a true declaration was made by the Applicant and nothing was concealed or misdeclared.

4.3 The request for re-export of the gold was not considered and the value adopted is on the higher side.

4.4 Both the Respondents failed to see that the Applicant had opted for the Red Channel proving his bonafides that he has got dutiable goods. However the officers have totally ignored this and registered a case against the Applicant.

4.5 Both the Respondents have ignored orders of the High Court and Government Of India allowing re-export of the goods in similar matters.

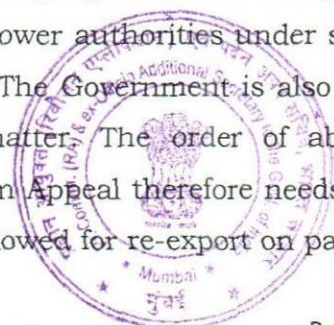
The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and set aside penalty of Rs. 33,000/- and order for re-export of the same and thereby render justice.



5. A personal hearing in the case was scheduled to be held on 14.02.2018, the Advocate for the respondent Shri K. Mohammed Ismail in his letter dated 12.02.2018 informed that his clients are unable to send their counsel all the way to Mumbai from Chennai and requested that the personal hearing may be waived and the grounds of the Revision Application may be taken as arguments for this Revision, and decide the cases as per relief sought for in the prayer of the Revision and oblige. Nobody from the department attended the personal hearing. The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities order and pass such other consequential orders and thereby render justice.

6. The Government has gone through the facts of the case. . The Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. The Applicant is a frequent traveller and a written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and if not intercepted he would have gone without paying the requisite duty, 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 exit. This is the first offence of the Applicant. There was no ingenious concealment of the gold, and neither was there a concerted attempt at smuggling these goods into India. 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 more so because he is a foreigner. Considering all factors, absolute confiscation of the gold chain is harsh and disproportionate. 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 Government is also of the opinion that a lenient view can be taken in the matter. The order of absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified and the confiscated gold chain is liable to be allowed for re-export on payment of redemption fine and penalty.



8. Taking into consideration the foregoing discussion, the order of absolute confiscation of the impugned gold is modified. Government allows redemption of the confiscated gold for re-export in lieu of fine. The confiscation of the gold chain totally weighing 123.5 gms, valued at Rs. 3,23,647/- (Rupees Three lacs, Twenty three thousand and Six hundred and forty seven) is ordered to be redeemed for re-export on redemption fine of Rs. 1,00,000/- (Rupees One lac) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs.33,000/- (Rupees Thirty three thousand) to Rs 25,000/- (Rupees Twenty Five thousand) under section 112(a) of the Customs Act, 1962.

10. The impugned Order in Appeal 464/2014 dated 14.03.2014 is modified as detailed above.

10. So, ordered.

(ASHOK KUMAR MEHTA)

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

ORDER No. 89/2018-CUS (SZ) /ASRA/Mumbai

DATED 06.03.2018

To,

Shri. Mohamed Rilwan.
C/o K. Mohamed Ismail, B.A.B.L.,
Advocate and Notary Public,
New 102, Linghi Chetty Street,
Chennai - 600 001.

True Copy Attested

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

