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SPEED POST

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. 373/108/B/2018-RA

Date of Issue 29.11.2018

ORDER NO. 891/2018-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 Abuthahir

Respondent : Commissioner of Customs, Tiruchirapally.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 57/2018-TRY dated 13.03.2018 passed by the Commissioner of CGST & C. Ex (Appeals), Trichirapally.



ORDER

This revision application has been filed by Shri Abuthahir (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 57/2018-TRY dated 13.03.2018 passed by the Commissioner of CGST & C. Ex (Appeals), Trichirapally..

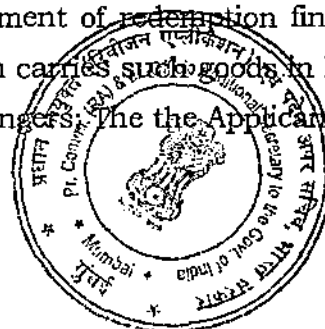
2. Briefly stated the facts of the case are that the applicant, arrived at the Trichy Airport on 09.09.2017. Examination of his person resulted in the recovery of two gold rings weighing 70 gms valued at Rs. 1,93,078/- (Rupees One lakh Ninety three thousand and Seventy eight).

3. After due process of the law vide Order-In-Original No. 182/2017 dated 11.09.20176 the Original Adjudicating Authority ordered absolute confiscation of the gold rings under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act,1992 and imposed penalty of Rs. 19,000/- 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 No. 57/2018-TRY dated 13.03.2018 reduced the penalty to Rs. 10,000/- and rejected the rest of the Appeal of the Applicant.

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

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; 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 ownership of the gold is not disputed and there is no ingenious concealment; Gold is a restricted item and not prohibited goods; The adjudication authority has not exercised the option of section 125 of the Customs Act, 1962 and simply proceeded to confiscate the gold; The gold rings were worn by the Applicant at the time of seizure and he had purchased the same for his own use out of his earnings; No declaration card was provided by the Customs authorities and hence the question of declaration does not arise; Gold is not a prohibited item and in a liberalized era it can be released on payment of redemption fine and baggage duty; Baggage rules will apply only if the person carries such goods in his baggage, the gold rings were worn by the Applicant on his fingers. The the Applicant was all along at the



red channel under the control of the officers; The only allegation is that he did not declare the gold; Section 111 d & l are not attracted simply because the Applicant was wearing the gold; Further as per the Customs Act, 1962 duty is mandatory but fine and penalty is not mandatory. The Hon'ble Supreme Court (full bench) in the case of Om Prakash vs UOI states that the main object of the enactment of the said Act was the recovery of Excise Duties and not really to punish for infringement of its provisions, 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.

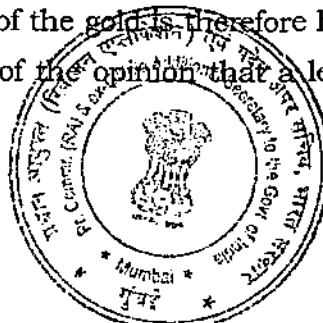
4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export of the gold on payment of nominal redemption fine and reduced personal penalty.

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 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 rings were worn by the Applicant on his fingers 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



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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 70 gms valued at Rs. 1,93,078/- (Rupees One lakh Ninety three thousand and Seventy eight) is ordered to be redeemed for re-export on payment of redemption fine of Rs.75,000/- (Rupees Seventy Five thousand ) under section 125 of the Customs Act, 1962. Government also observes that the order of the Commissioner(Appeals) has reduced the penalty from Rs. 19,000/- ( Rupees Nineteen thousand) to Rs. 10,000/- (Rupees Ten thousand). The facts of the case do not justify a further reduction, the penalty imposed on the Applicant is under section 112(a) of the Customs Act, 1962 is appropriate.

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

11. So, ordered.

*Ashok Kumar Mehta*  
29/10/18

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

ORDER No. 891/2018-CUS (SZ) /ASRA/MUMBAI

DATED 29.10.2018

To,

Shri Abuthahir  
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, Tiruchirapally.
2. The Commissioner of Customs CGST & C. Ex (Appeals), Trichirapally.
3. Sr. P.S. to AS (RA), Mumbai.
- ~~4.~~ Guard File.
5. Spare Copy.

