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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 373/353/B/14-RA/1301 Date of Issue 14.03.2018

ORDER NO.91/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 13.03.2018 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 Azeem Rahman

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 1695/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Shri Azeem Rahman against the order no C.Cus No. 1695/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian citizen had arrived at the Chennai International Airport on 09.05.2014. Examination of his baggage and person resulted in recovery of 2 pioneer car stereo system, one Sony LED 55" TV and one gold chain weighing 105 gms valued at 2,69,626/-. The two car stereos and the Sony LED 55" TV were released on applicable payment of duty after allowing duty free allowance of Rs. 15,000/-. As the Applicant had not declared the impugned gold the original Adjudicating Authority vide his order 619/2014 Batch A dated 09.05.2014 *absolutely confiscated the gold chain referred to above under section 111(d), 111(l),* 111(m) and 111(o) of the Customs Act, 1962 read with section 3(3) of the Foreign trade (D &R) Act, 1992. A Penalty of Rs. 27,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No. 1695/2014 dated 12.09.2014 rejected the Appeal.

4. The applicant has filed this Revision Application interalia on the following grounds that; the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; that the Applicant had worn the gold chain, he had declared the gold chain orally; there are no specific allegations that he had crossed the green channel; the gold jewelry was worn by the Applicant and it is his personal belongings and was not for commercial trade and as the jewelry was worn by the Applicant, the same was visible and he showed it to the officer therefore the question of declaration does not arise, the facts can also be ascertained through the CCTV video record; The gold is personal belongings and not brought for commercial sale; that section 111 d, l, m and o are not attracted in the case; CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card; The Hon'ble Supreme Court has in the case of *Om Prakash vs Union of India* states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; the worn gold jewelry should have been allowed for re-export without redemption fine and penalty. But the officers proceeded to detain the jewelry because it was not declared; the gold was not concealed in an ingenious

manner, the authorities should have allowed re-export by imposing lesser fine and penalty..

The Revision Applicant cited various assorted judgments and boards policies in support of re-export in support of his case and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 07.03.2018, 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 gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant is a frequent traveller and well aware of the rules. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been 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 was intercepted before he exited the Green Channel. The gold was worn by the Applicant, hence, there was no concealment of the goods. Even though the Applicant is a frequent traveller there are no previous offences registered against him. 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. 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 order of absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified and the confiscated gold jewelry is liable to be allowed for re-export on payment of redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold lump for re-export in lieu of fine. The confiscated gold

jewelry is allowed for re-export in lieu of fine. The gold jewelry weighing 105 gms valued at Rs. 2,69,626/- (Two lacs sixty nine thousand Six hundred and twenty six) is ordered to be redeemed for re-export on payment of redemption fine of Rs.1,00,000/-(Rupees One lac) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 27,000/- (Rupees Twenty seven thousand) to Rs. 25,000/- (Rupee Twenty five thousand) under section 112(a) of the Customs Act,1962.

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

10. So, ordered.

17.7.2018

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

ORDER No.91/2018-CUS (SZ) /ASRA/MUMBAI DATED 13.03.2018

To,

Shri Azeem Rahman

C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

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

Copy to:

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