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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/352/B/14-RA / 1303

Date of Issue 14.03.2018

ORDER NO. 93/2018-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 Shaik Mahammad Ali

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. 1666/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Shaik Mahammad Ali against the order no C.Cus No. 1666/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, arrived at the Chennai International Airport on 05.01.2014 and was intercepted while attempting to go through the Green Channel without declaration. Examination of his person resulted in recovery of three gold bits totally weighing 502 gms valued at 14,93,450/-. The gold bits were concealed in three different places, in between used clothes of his baggage. As the Applicant had not declared the impugned gold the original Adjudicating Authority vide his order 16/2014 dated 22.05.2014 absolutely confiscated the gold bits referred to above under section 111(d) and 111(l) of the Customs Act, 1962, read with section 3(3) of the Foreign trade (D &R) Act, 1992. A Penalty of Rs. 1,30,000/- 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. 1666/2014 dated 08.09.2014 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia 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 is an eligible passenger to avail concessional rate of duty as he had stayed abroad for more than six months; that he did not admittedly pass through the green channel, but was all along at the red channel under the control of the officers; the gold jewelry was worn by the Applicant and it is his personal belongings and was purchased by his own earnings from the jewelry shop in Saudi Arabia, for his family and sisters daughters marriage to be held on 27.01.2014 in Kadappa, Andhra Pradesh; His prayers for re-export and he had sufficient foreign currency and expressed his willingness to pay duty, But was not heard by the officers; He is not a frequent visitor; As per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 has stated that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared; The gold was not ingeniously concealed but was kept between his clothes at the time of interception; Assuming he had not declared the gold it was just a technical fault; 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,



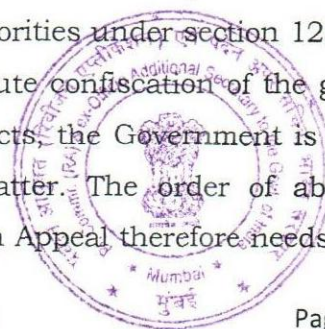
such an exercise was not conducted by the officers; The option for redeeming the gold on redemption fine and penalty was not extended under section 125 of the Customs Act, 1962; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions;

The 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 or release the gold on concessional rate of duty.

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. 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 bits were kept in his baggage along with his clothes and there was no ingenious concealment of the gold. 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. Government also noted that the Applicant has stayed abroad for more than six months and therefore eligible passenger to bring one kilogram of gold at concessional rate of duty. 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 502 gms valued at Rs. 14,93,450/- ( Four lacs Ninety three thousand Four hundred and fifty) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 5,00,000/- (Rupees Five lacs.) 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 the Applicant is therefore reduced from Rs. 1,30,000/- (Rupees One lac Thirty thousand ) to Rs. 1,00,000/- ( Rupees One lac ) 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.

*(Handwritten Signature)*  
13.02.18

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

ORDER No. 93/2018-CUS (SZ) /ASRA/MUMBAI

DATED 13.02.2018

To,

Shri Shaik Mahammad Ali  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

**True Copy Attested**

*(Handwritten Signature)*  
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, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

