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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. 373/74/B/16-RA

Date of Issue

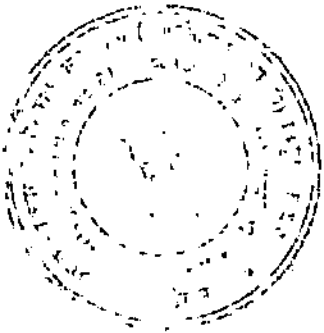
03.12.2010

ORDER NO. 975/2018-CUS (SZ) / ASRA / MUMBAI DATED 29.11.2018 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 Ebrhim Syed Ahmed

Respondent : The Principal Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 153/2016 dated 24.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Ebrhim Syed Ahmed (herein referred to as Applicant) against the Order in Appeal No 153/2016 dated 24.03.2016 passed by the Commissioner of Customs (Appeals 1), Chennai.

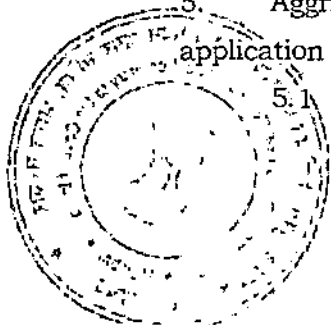
2. Shri Ebrhim Syed Ahmed (herein referred to as "the applicant") was intercepted by the Customs Officers at the Anna International Airport, Chennai on his arrival by Air India Express Flight No. IX-0621 from Kuala Lumpur on 05.09.2015. The respondent had not declared any value in Customs Declaration Form. On enquiry as to whether he possessed any dutiable goods, the respondent replied in negative. During the personal search of the applicant, the Customs Officers recovered fourteen pieces of gold wrapped carbon paper from his cloths in suitcase and one gold chain on his person. The gold so recovered was totally weighed 273 gms and valued at Rs.7,29,729/- (Rupees Seven Lakh Twenty Nine Thousand Seven Hundred Twenty Nine Only) . On enquiry, the respondent informed that impugned gold was gifted to him by his well wisher in Malaysia. As he was under medication, he had requested the co-passenger to fill the Customs Declaration Card. While he was brought out of the airport on the wheel chair, he was examined and the gold was recovered by Customs Officers. The Customs officers seized said impugned under reasonable belief that the applicant had attempted to smuggle them in India.

3. The Original Adjudicating Authority vide Order-In-Original No. 341/2015-16 -AIRPORT dated 12.11.2015 ordered absolute confiscation of impugned gold totally weighing 273 gms valued at Rs. 7,29,729/- under Section 111 (d) & (l) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 75,000/- under Section 112 (a) of the Customs Act, 1962 on the applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner of Customs (Appeals-1), Chennai. The appellate authority upheld the original order and rejected the appeal.

5. Aggrieved with the above order the applicant has filed this revision application on the grounds that;

5.1 the applicant was in a drowsy state and requested his co-passenger to fill up the Customs Declaration Card..



5.2 the gold chains was found on person and pieces of gold were found in his suitcase and not concealed.

5.3 the gold is not prohibited commodity and hence not liable for absolute confiscation.

6. A personal hearing in the case was fixed on 15.11.2018 and the same was attended by Shri B. Satish Sundar & Shri V. Santaram, Advocates on behalf of the applicant. The advocates submitted brief written note during personal hearing which is taken on record. They also pleaded that order in appeal be set aside and gold be redeemed for re-export on payment of fine and penalty.

7. The Government has gone through the facts of the case. The applicant had passed through green channel and while he was moving through the exit of the Customs Arrival hall on wheelchair, he was intercepted by the Customs Officers. The applicant had asked the co-passenger to fill up the column in Customs Declaration Form as NIL. On subsequent search of the applicant resulted in recovery of impugned gold totally weighing 273 gms valued at Rs. 7,29,729/-. Since the applicant did not declare the impugned gold as required under Section 77 of the Customs Act, 1962, the confiscation of the same is justified in the instant case.

8. However, the facts of the case state that the impugned gold is claimed by the applicant and there is no other claimant. Thus the Government observes that the ownership of gold is not disputed. The impugned gold was recovered on person and from the cloths in his suitcase and not ingeniously concealed. Under the circumstances absolute confiscation of the impugned gold chains appears to be harsh option. There is no reference of any previous offence against the applicant. Thus mere non submission of declaration cannot be held against the applicant.

9. There are 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. Under the circumstances, Government is of the opinion that a lenient view can be taken in the matter. The applicant has pleaded for redemption of gold on payment of fine 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

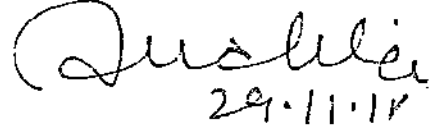


the confiscate gold is liable to be redeemed on payment of fine and the penalty could be reduced to meet the ends of justice.

10. Taking into consideration the forgoing discussion, Government allows redemption of the confiscated gold on payment of redemption fine and appropriate duty. The impugned gold totally weighing 273gms valued at Rs. 7,29,729/- (Rupees Seven Lakh Twenty Nine Thousand Seven Hundred Twenty Nine Only) is ordered to be redeemed on payment of redemption fine of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) under Section 125 of the Customs Act, 1962. The penalty imposed under Section 112(a) of the Customs Act, 1962 is reduced from Rs. 75,000/- to Rs. 50,000/- (Rupees Fifty Thousand Only).

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

12. So, ordered.

  
29.11.18

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

ORDER No. 915/2018-CUS (SZ) /ASRA/MUMBAI. DATED 29.11.2018

To,

1. The Commissioner of Customs, Chennai-I,  
New Custom House, Meenambakkam,  
Chennai- 600 027.
2. Shri Ebrahim Syed Ahmed,  
35, Anjugam Nagar,  
3<sup>rd</sup> Street, (Opp. Bharani Water Wash),  
Kolathur, Chennai- 600 001.

Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Customs House, Chennai- 600 001.
2. M/s Aum Associates, Advocates,  
Suite No. 25, 1<sup>st</sup> floor, R.R. Complex No.1,  
Murthy Lane, Rattan Bazaar,  
Chennai - 600 003.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

