

373/125 & 126/B/13-RA

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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. 373/125 & 126/B/13-RA/968

Date of Issue 30.01.2018

ORDER NO. <sup>03-04</sup> /2018-CUS(SZ)/ASRA/MUMBAI DATED 25.01.2018  
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.

**Applicants :** Smt. Sirajunnisa and Zannathunnisa.

**Respondent :** Commissioner of Customs, Chennai.

**Subject :** Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
1064 & 1065/2013 dated 31.07.2013 passed by the  
Commissioner of Customs (Appeals), Chennai..



ORDER

These revision applications has been filed by Smt. Siraj Unnissa and Smt. Zannathunissa, hereinafter referred to as the "Applicants", against order-in-appeal no. C.Cus No. 1064 & 1065/2013 dated 31.07.2013 passed by the Commissioner of Customs (Appeals), Chennai. Both the Revision Applications have been addressed by a common Appellate order and are therefore being decided together by a common order.

2. Brief facts of the case are as follows; The Applicants, arrived from Singapore at Anna International Airport, Chennai on 07.04.2013. The Applicants were intercepted at the exit gate and a personal search recovered assorted new and old gold jewelry. The Applicant had not made any declaration of any dutiable goods as required under section 77 of the Customs Act, 1962 and hence the original Adjudicating Authority confiscated the impugned new gold jewelry under Section 111(d), (i), (j), (l) and (m) of the Customs Act 1962 read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. The original Adjudicating Authority confiscated only the new gold jewelry and allowed the old gold jewelry worn by the Applicants free of duty. The confiscated gold was allowed redemption in lieu of fine under section 125 of Customs Act, 1962. The details of the orders are as below;

Sl. No.	Revision Application No.	Applicant	O-in-O No. & dt.	Qty. of gold (in gms)	Value of Gold confiscated & allowed redemption	Redemption fine imposed (in Rs.)	Personal Penalty (in Rs.)
1	373/125 /B/13-RA	Sirajunnisa	375/Batch A dt. 07.04.13	137	3,91,860/-	2 lacs	40,000/-
2	373/126 /B/13-RA	Zannathunnisa	374/Batch A dt. 07.04.13	116	3,31,794/-	1.7 lacs	34,000/-



3. Being aggrieved with the order in original the Applicants filed individual Appeals before the Commissioner of Customs (Appeals) Chennai. The Commissioner (Appeals) vide common order No. 1064 & 1065/2013 dated 31.07.2013 rejected the appeals being devoid of merits. Aggrieved by the Appellate order the Applicants have filed these Revision Applications inter alia on the following grounds.

3.1. Both the authorities have failed to appreciate and consider the fact that the Customs Officer had allowed the applicant and her family member to go to Singapore with their old gold jewelry.

3.2. Both authorities failed to appreciate that it is customary and convention that these jewelries are worn by ladies during functions in different styles to impress their social standing. The wedding invitation is a genuine evidence to prove the case of the appellants.

3.3. The Appellate authority erred in rejecting the contention of the applicant that the new gold jewelries are only the exchanged bangles from the old bangles simply because the applicant did not produce "bill or document".

3.4. The authorities ought to have held that a lady can have 8 or 9 bangles in her hand and one chain in her possession for own use, more so when there are 3 members of family undertaking the journey for the purpose of attending a marriage function.

3.5. The gold jewelry seized belonged to the applicants. The applicants and their family members were not given free allowance.

3.6. Both the authorities erred in confiscating the gold jewelry.

3.7. The Applicants were wearing the gold and had not crossed the Green Channel, had not mis-declared the value of the gold bangles nor concealed the goods. They are not carriers and gold jewelry brought by the Applicant is not for commercial purpose. Hence, confiscation, and imposition of redemption fine and penalty is uncalled for and unwarranted as Personal Penalty and redemption fine are attracted only in the case of smuggling.

*[Handwritten signature]*



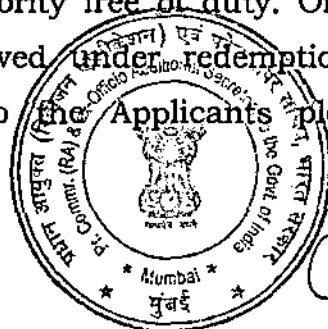
3.8. Both the authorities failed to note that any passenger who stays for a period of six months are permitted to bring gold of enormous quantity of about 10 kgs on beneficial scheme policy, but a person who had stayed for 81 days has not been given any consideration for bringing her own jewellery of about 137 grams. This is absolutely arbitrary and violative of article 14 and 21 of Constitution of India.

3.9. The Applicant may not be deprived of her valuables since she is not in a position to establish taking the gold jewelry abroad at the time of leaving India.

Hence the Revision Applications prayed that the Hon'ble Revision Authority may please set-aside the order passed by Commissioner of Customs (Appeals) and consequently order the release of goods without penalty and redemption fine or in the alternative to order for the re-export of the goods and pass such further or other orders as this Hon'ble Revision Authority may deem fit and proper and thus render justice.

4. A personal hearing was granted to the Applicant on 22.01.2017, which was attended by the Advocate, Shri Abdul Nazeer. The Advocate, re-iterated the submissions filed in the grounds of Appeal and pleaded to allow the Revision Application by allowing re-export and that the redemption fine and penalty may be reduced by taking a lenient view.

5. The Government has carefully gone through the facts of the case. The Applicants are Indian citizens. It is a fact that the gold was not declared by the Applicants as required under Section 77 of the Customs Act, 1962, hence there was an attempt to evade duty. The facts of the case also reveal that the Applicants were wearing gold jewelry, part of which was old, which was allowed by the original Adjudicating Authority free of duty. Only the new gold jewelry was confiscated and was allowed under redemption option. Government, thus observes that contrary to the Applicants' pleadings, free allowance was



accorded in the order of the original Adjudicating Authority. Further, no documents were provided by the Applicants to show that they exchanged old jewelry for new in Singapore.

6. It is a fact that there were three persons travelling together. The Applicants had travelled to Singapore to attend a marriage function and a house warming ceremony, and it is customary to wear jewelry befitting their status. There was no ingenious attempt of concealing the gold jewelry. It is also a fact that the applicants were intercepted before crossing the green channel. Applicants ownership of the gold jewelry is also not disputed. The gold chain and the bracelet also is not of primary gold but was in the form of personal jewelry. There is no evidence to show that it was brought for sale or brought for third person for monetary consideration. Since the applicants have contravened the provisions of Customs Act, 1962 by not disclosing the confiscated gold they rendered the gold liable for confiscation. However, the applicants have now requested for allowing export of the confiscated gold for re-export on payment of redemption fine, Government is inclined to accept the request. In view of the above mentioned observations, the Government also finds that a lenient view can be taken while imposing redemption fine and penalty upon the applicants

7. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The redemption fine in lieu of confiscation allowed for export imposed on Smt. Sirajunnisa in lieu of the confiscation of gold totally weighing 137 gms, valued at Rs. 3,91,860/- (Rupees Three lacs, ninety one thousand eight hundred and sixty) is ordered to be reduced from Rs. 2,00,000/- (Rupees Two Lakhs ) to Rs. 1,00,000/- (Rupees One lac). Government also reduces the personal penalty imposed on the Applicant from Rs. 40,000/- (Rupees Forty thousand) to Rs 10,000/- (Rupees Ten thousand) under section 112(a) of the Customs Act, 1962.

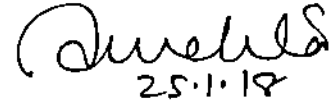
8. The redemption fine imposed on Smt. Zarnathunnisa in lieu of the confiscation allowed for re-export of gold totally weighing 116 gms, valued at



Rs.3,31,794/- (Rupees Three lacs, thirty one thousand seven hundred and ninety four) is also ordered to be reduced from Rs. 1,70,000/- (Rupees One Lakh seventy thousand ) to Rs. 75,000/- (Rupees Seventy five thousand). Government also reduces the personal penalty imposed on the Applicant from Rs. 36,000/- (Rupees thirty six thousand) to Rs 10,000/- (Rupees Ten thousand) under section 112(a) of the Customs Act,1962.

8. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

9. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No. <sup>03-04</sup>/2018-CUS (SZ)/ASRA/

DATED 25-01-2018

To,

Smt. Sirajunnisa,  
W/o Moulana Abdul Shaheed,  
Old No. 2/116, New No. 2/111,  
Mahasoomiya Street, Gafar Colony,  
Boodamangalam Post.  
Thiruvarur Dist.

True Copy Attached

Smt. Zanathunnnisa,  
W/o Nasurudeen,  
724, Nooriyath Street,  
Poddakkuddi Post,  
Needamangalam Taluk,  
Thiruvarur Dist.

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

- Copy to:
1. The Commissioner of Customs, A. I. 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.

