



सत्यमेव जयते

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

F.No. 380/07/B/16-RA/1011

Date of Issue 01.02.2018

ORDER NO. 06/2018-CUS (82) / ASRA / MUMBAI / DATED 31.01.2018 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.

Applicant : Commissioner of Customs (Appeals-I), Chennai-I

Respondent : Smt. Sithy Nooriya .

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 579/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

The facts of the case is that on 27.01.2015, Smt. Sithy Nooriya, holder of Sri Lankan passport arrived from Colombo by Srilankan Airlines Flight UL 121 dated 27.01.2015, she was intercepted at the Green Channel and on questioning whether she was in possession of gold she replied in negative. The Applicants personal search resulted in recovery of two gold chains, kept concealed inside the bhurka worn by her, two gold rings and two gold bracelets were found concealed inside the inner wear worn by the passenger. As the passenger had not declared the gold and no valid permit was in her possession the gold totally weighing 241 gms and totally valued Rs. 6,69,142/-(MV) were seized under Customs Act,1962 read with Sec3 (3) of the Foreign Trade (Trade and Development) Act, 1962.

2. The Applicant in her voluntary statement interalia stated that she is trading in sarees and ready made chudidars, that she had declared 'NIL' in the Customs Declaration Card; that the gold was concealed inside the inner wear and burkha worn by her, as she was not in possession of any legal/valid documents for the legal import of the gold or any foreign/Indian currency to pay Customs duty; that she had concealed the gold for evading the payment of customs duty. She requested to be pardoned.

3. The Joint Commissioner of Customs (Airport) vide Order in original No.56/2015-16 dated 29.04.2015 confiscated the assorted gold jewellery, totally weighing 241 gms totally valued at Rs. 6,69,142/-(M.V.) under section 111 (d) and (1) of Customs Act. 1962 read with Sec 3 (3) of the Foreign Trade (Development & Regulation) Act, 1962 with an option to redeem the same for re-export on payment of fine of Rs. 2,00,000/- in terms of section 125 of the Customs Act, 1962. Penalty of Rs. 60,000/- was also imposed under section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order of the lower authority, the department filed an appeal before the Commissioner of Customs (Appeal-I), Chennai. The Commissioner (Appeals) vide his order in C. Cus-I No. 579/2015 dated 28.09.2015 upheld the order of the lower adjudicating authority rejecting the



appeal filed by the department as devoid of merits. Aggrieved by the order the above order the Principal Commissioner of Customs, Chennai-I has filed the present Revision Application on the following grounds;

- Both the Order in Original passed by the lower adjudicating Authority and the order of the Commissioner (Appeals) are neither legal or proper in as much as the passenger had attempted to smuggle the gold by way of non declaration knowing well that she was not eligible passenger to import gold and thus, had a culpable mind (i) to smuggle them into India without payment of duty and (ii) to circumvent the restrictions /prohibitions imposed on the import of gold.
- In her voluntary statement given on the day of the seizure, Smt. Sithy Nooriya admitted that she was not in possession of any legal/valid documents for the legal import of the gold or any foreign/Indian currency to pay Customs duty; that she had concealed the gold for evading the payment of customs duty.
- The Passenger has contravened the section 77 and 11 of the Customs Act, 1962 read with regulations 3(3) of the Foreign Trade (Development & Regulation) Act 1992 and thereby liable for absolute confiscation under section 111 (d) and (l) Customs act, 1962. Whereas the Appellate authority without considering the following aspects, given an option to redeem the gold jewelry on payment of redemption fine of Rs. 2,00,000/- for export.
- The eligibility of a passenger to clear the gold imported by her is covered under Notification No, 12/2012 CUS dated 17.03.2012 as amended. In the present case, the passenger is a Srilankan and hence does not fulfil the conditions stipulated under Notification No, 12/2012 CUS dated 17.03.2012 and Baggage Rules. Therefore the passenger is ineligible to re-export the gold jewelry.
- The Revision Applicants has cited various assorted judgments in support of their case, praying that the order of the Appellate Authority be set aside or any order as deemed fit.



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5. Meanwhile the Respondent, passenger, Smt Sithy Nooriya filed W.P.No.19038 of 2017 before Hon'ble High Court Madras seeking issuance of a writ of mandamus to implement the order passed by the Commissioner (Appeals). The contention raised by the petitioner in these writ petition is that though the respondent Department, have preferred a revision petition before the Joint Secretary to Government of India under Section 129 DD of the Customs Act, 1962 and show cause notice of such revision has been received by the petitioner on 2.4.2016 and they have submitted their reply through their counsel on 06.06.2016, the Revisional Authority does not have jurisdiction to set aside the order passed by the Commissioner (Appeals) since both the officers are in the same cadre.

6. Hon'ble High Court in its order dated 27.07.2017 observed that the show cause notice under Section 129 DD of the Act dated 2.4.2016 has been received by the petitioner and have also submitted a detailed reply dated 06.06.2016. However, in the reply, the petitioner has not specifically raised the plea with regard to the jurisdiction of the Revisional Authority to decide the matter as canvassed before this Court in these writ petitions. Since the question of jurisdiction can also be decided by the very same authority, namely, the Revisional Authority, the Hon'ble High Court has issued the following directions in this regard.

" Accordingly, the writ petitions are disposed of, with a direction to the petitioners to file additional reply to the show cause notice dated 2.4.2016, within a period of 10 days' from the date of receipt of a copy of this order with an advance copy served on the respondents. The Revisional Authority, on receipt of the additional reply from the petitioners, shall fix the date for personal hearing to the petitioners as well as the officials of the department and decide the revision petition on merits and in accordance with law. While doing so, the Revisional Authority shall decide the question of his jurisdiction to decide the revision petition as canvassed by the petitioners as first among the

several issues. It is open to the department to canvass all points before the



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revisional authority considering the fact that the Commissioner (Appeals) had passed an order in favour of the petitioners on 9.9.2015 and the revisional application was presented by the Department only in January 2016. The Revisional Authority shall endeavour to decide the revision petition as directed above, within a period of 15 days' from the date on which personal hearing is concluded. No costs. Consequently, connected miscellaneous petitions are closed".

7. In this regard it is explained that the office of the Revisionary Authority, Mumbai has been newly established and the undersigned has taken over the charge of the Revisionary Authority, Mumbai on 09.10.2017 and has immediately set upon establishing an office. The order of allocation of space for setting up an office was issued on 02.11.2017, and the office infrastructure has been recently set up. This case is among the first set of cases taken up for hearing in view of the directions of the Hon'ble High Court of Madras, order dated 27.07.2017.

8. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed in the reply to the Show Cause Notice and cited the decisions of GOI/Tribunals where option was given for re export of gold was allowed and pleaded for upholding the Order in Appeal and that the Revision Application be dismissed. Nobody from the department attended the personal hearing.

9. I have gone through the facts of the case. The issue to be decided is whether the Original Adjudicating Authority and the Appellate Authority order of allowing the re-export is legal and proper. The Respondent was intercepted at the Green channel. On interception, the officers of the Air Intelligence Unit She was given an opportunity to declare the gold she was carrying, the Respondent replied in the negative and in her declaration card the value of the goods carried by her was shown



as "Nil". The gold was not declared as mandated by section is Section 77 of the Customs Act, 1962. The respondent was fully aware that the gold jewelry should suffer customs duty for import and the violations were not out of ignorance. She has admitted the same in her statement recorded immediately after the seizure of the gold. In view of these facts, the Government is of the opinion that the impugned gold is liable for confiscation under section 111 (d) and (l) of the Customs Act, 1962. The Respondent is also liable for penal action under section 112 (a) of the Customs Act, 1962.

10. However, the Respondent is a foreign national. The eligibility criteria in Notification No, 12/2012 CUS dated 17.03.2012 is applicable to persons of Indian origin importing the gold and not applicable to a foreign national. There was no indigenous concealment of the gold and the quantity of the gold seized is small. Gold is a restricted item and not prohibited. The respondent has not acted as a carrier for some other person she had come to India in relation to business and trade. The gold was recovered from her possession, therefore the ownership of the gold jewelry is not disputed. The gold chain and the rings are also not of primary gold but was in the form of personal jewelry. The applicants had requested for allowing re-export of the confiscated gold. Government is of the opinion that there is no illegality in allowing re-export on imposition of suitable redemption fine and penalty. The Original Adjudicating Authority has thus used his discretion in allowing re-export on payment of redemption fine under section 125 and penalty under section 112 (a) of the Customs Act, 1962. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority and Government finds no reason to disagree with the impugned Appellate order. There are a catena of judgments which support re-export on imposition of suitable fine and penalty.

11. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus-I No. 579/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals), Chennai is upheld as legal and proper.



12. Accordingly, the instant Revision application is dismissed. This order is passed in compliance of the order of the Hon'ble High Court of Madras order dated 27.07.2017 in Writ Petition no. 19.37 to 19039 of 2017.

13. So, ordered.

Ashok Kumar Mehta
31.1.18

(ASHOK KUMAR MEHTA)

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

ORDER No. 06/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.01.2018

To,

Smt. Sithy Nooriya,
Shri S. Palinikumar, Advocate,
No. 10, Sukurama Street,
Second Floor,
Chennai -600 001.

True Copy Attested

Sankarsan Munda
21/1/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Chennai-I.
2. The Commissioner of Customs (Appeals-I), Chennai.
3. Shri S. Palinikumar, Advocate, No. 10, Sukurama Street, Second Floor, Chennai -600 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

