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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F. No. 373/97/B/17-RA

25/37

Date of Issue 11/12/2018

ORDER NO. 1007/2018-CUS (SZ) / ASRA / MUMBAI DATED 30.11.2018 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 : Smt Tew Siew Hong.

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 54 to 56/2017-TRY (CUS) dated 19.04.2017 passed by the Commissioner of Customs (Appeals-II), Trichy.



ORDER

This revision application has been filed by Smt Tew Siew Hong (herein referred to as 'the Applicant') against the Order in Appeal No 54 to 56/2017-TRY (CUS) dated 19.04.2017 passed by the Commissioner of Customs (Appeals-II), Trichy Commissionerate.

2. The passenger, Smt Tew Siew Hong, holder of Malaysian Passport, was intercepted by the officers of Air Intelligence Unit at the Trichy Airport on his arrival by the Air Asia Flight No. AK29 from Singapore on 30.08.2015. The applicant had not declared any value in Customs Declaration Form. On enquiry as to whether he possessed any dutiable goods, the applicant replied in negative. During the personal search, the officers recovered two unjoined and roughly finished gold chains & four roughly finished plain gold bangles wearing the same on neck and hands covered with sweater. The impugned gold chains & bangles recovered from the applicant were totally weighing 564.600 gms. and valued at Rs. 14,17,146/- (Rupees Fourteen Lakh Seventeen Thousand One Hundred Forty Six Only). The applicant could not produce any valid permit / license / document in respect of the impugned gold. On enquiry, the applicant informed that the impugned gold chains and bangles were handed over to her by Miss Vijaya Muniandy who is a relative and co-passenger with her in the same flight with a request to hide them under their dress and hand over the same outside the Trichy Airport. The applicant concealed the gold chains and bangles to clear them without knowledge of Customs and without payment of duty. The impugned gold chains and bangles were seized by the Customs Officers under reasonable belief that the applicant attempted to smuggle them in India without payment of appropriate Custom Duty.

3. The Original Adjudicating Authority vide Order-In-Original No. 58/2016-JC dated 03.08.2016 ordered absolute confiscation of two unjoined and roughly finished gold chains and four roughly finished plain bangles totally weighing 564.500 gms valued at Rs. 14,17,146/-



under Section 111 (d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 3,00,000/- 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-II), Trichy. The appellate authority vide Order in Appeal No. 54 to 56/2017 dated 19.04.2017 reduced the penalty amount from Rs. 3,00,000/- to Rs. 1,00,000/- and modified the order in original to that extent.

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

- 5.1 there was no concealment of gold jewellery. The applicant has worn the impugned gold chains and bangles on neck and hands i.e. in person. This is normal way of wearing jewellery.
- 5.2 the gold jewellery was not recovered by conducting any personal search but only the applicant herself handed over the same to the officers.
- 5.3 it was personal opinion of the appraiser that the impugned jewellery was roughly unfinished.
- 5.4 the personal jewellery worn by the applicant was not prohibited.
- 5.3 the confiscated gold ought to have been allowed to be redeemed under Section 125 of the Customs Act, 1962.

6. Shri N. Manickam, Advocate on behalf of the applicant submitted vide his letter RA F. No. 373/97/B/17-RA dated 29.10.2018 that the applicants do not wish to be heard in person and requested to decide the case on merit.

7. The Government has gone through the facts of the case. The applicant was crossing the green channel; she was intercepted by the Customs Officers. The applicant had written "No" in the column in



Customs Declaration Form. On subsequent search of the applicant resulted in recovery of impugned two unjoined and roughly finished gold chains & four roughly finished plain gold bangles totally weighing 564.600 gms valued at Rs. 14,17,146/-. 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 jewellery is claimed by the applicant and there is no other claimant. Thus the Government observes that the ownership of gold jewellery is not disputed. The gold jewellery was recovered in person i.e. worn by the applicant on her neck and hands and not ingeniously concealed. Under the circumstances absolute confiscation of the impugned gold jewellery 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 to allow option to redeem the impugned gold chains and bangles and the Government is inclined to accept the plea. The order of absolute confiscation of two unjoined and roughly finished gold chains & four roughly finished plain gold bangles in the impugned Order in Appeal therefore needs to be modified and the confiscated gold jewellery is liable to be allowed to be redeemed payment of redemption fine. The reduction of the penalty by the appellate authority appears to be commensurate with the value of the jewellery and the gravity of offence.

10. Taking into consideration the forgoing discussion, Government orders redemption of confiscated two unjoined and roughly finished gold chains & four roughly finished plain gold bangles totally weighing



564.600 gms valued at Rs. 14,17,146/- (Rupees Fourteen Lakh Seventeen Thousand One Hundred Forty Six Only) on payment of redemption fine of Rs.6,00,000/- (Rupees Six Lakh Only) under Section 125 of the Customs Act, 1962. The penalty of Rs. One Lakh imposed under Section 112 of Customs Act, 1962 meets the ends of the justice, hence upheld.

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

12. So ordered.

(Signature)
20.11.18

(ASHOK KUMAR MEHTA)

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

ORDER No. ¹⁰⁰⁷/2018-CUS (SZ) /ASRA/MUMBAI DATED 30.11.2018

To,

Shri

1. Smt Tew Siew Hong
C/O Nazheerkhan,
No. 30, 12th Street, Bose Nagar,
Pudukottai Pin - 622 001.
Tamilnadu.

ATTESTED

(Signature)
11.12.18

S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, Trichy, No.1, Williams Road, Tiruchirappalli- 620 001.
2. The Commissioner of Customs (Appeals-II), No. 1, Williams Road, Cantonment, Tiruchirappalli- 620 001.
3. Shri N. Manickam, Advocate, 37, 8th Cross, Renga Nagar, K.K. Nagar, Post Tiruchirappalli- 620 021.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

