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SPEED POST

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. 373/92/B/17-RA 2340

Date of Issue 11/12/2018

ORDER NO. <sup>1017</sup>/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 : Noor Jhan Bibi @ Hlahla

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. C.  
Cus-I No. 75/2017 dated 07.04.2017 passed by the  
Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Smt. Noor Jhan Bibi @ Hlahla (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 75/2017 dated 07.04.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Burmese citizen arrived at the Chennai Airport on 21.12.2015. She was intercepted as she was trying to pass through the exit gate on a wheel chair and examination of her person resulted in the recovery of four gold chains and 5 gold bars totally weighing 2950 grams valued at Rs. 75,16,600/- (Rupees Seventy Five lakhs Sixteen thousand Six hundred). The gold was recovered from two purses concealed in sanitary napkins in the innerwear worn by the applicant.

3. After due process of the law vide Order-In-Original No. 157/25.11.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 7,50,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 10,000/- was also imposed under Section 114AA of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) application who vide Order-In-Appeal C. Cus-I No. 75/2017 dated 07.04.2017 rejected the appeal of the Applicant, but set aside the penalty of Rs. 10,000/- imposed under Section 114AA of the Customs Act,1962.

5. The applicant has filed this Revision Application interalia on the following grounds that

5.1 The order of the Appellate authority is against the law, weight of evidence and probabilities of the case; The department has sought to make a case that the applicant was a mere carrier however the sender or receiver has not been identified or investigated; The gold was brought for sale to use the proceeds for medical treatment for a suspected tumour in the stomach. The gold was purchased from the sale proceeds of a property sold in Burma; Import of gold is not prohibited and the Adjudicating Authority should have allowed it to be redeemed on redemption fine and penalty; Application of restrictions would not make the gold prohibited; There are a number of



precedent orders having more or less similar facts wherein the option to redeem has been extended; the order of the Appellate authority sustaining the imposition of penalty is wholly unsustainable.

4.2 The Revision Applicant cited case laws in his defense and prayed for a lenient view in the matter.

5. A personal hearing in the case was scheduled to be held on 15.11.2018. The Advocate for the applicant appeared for a personal hearing and submitted copies of case laws in defence of his case and pleaded that a lenient view in the matter and prayed for setting aside the Order in Appeal and release the gold on redemption fine for re-export on reduced penalty in the interest of justice.

6. The Government has gone through the case records it is observed that the gold chains and bars were indigenously concealed in the two purses concealed in sanitary napkins in the innerwear worn by the applicant. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The release on concessional rate of duty also cannot be entertained as the Applicant has not declared the gold as required under Section 77 of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant was fully aware that the gold needs to suffer customs duty. The Applicant had no intention of declaring the gold to the authorities and if she was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty.

7. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.



8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus-I No. 75/2017 dated 07.04.2017 passed by the Commissioner of Customs (Appeals-I), is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

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

ORDER No. 1017/2018-CUS (SZ) /ASRA/MUMBAI. DATED 30.11.2018

To,

1. Smt. Noor Jhan Bibi @ Hlahla  
W/o Mohammed  
House No. 212/2014 No. 130  
Mingla Street, Yangon,  
Myamar.
2. Smt. Noor Jhan Bibi @ Hlahla  
POA Shri Ajmal Khan,  
S/o Shamshudeen  
No. 1-2 Madurai Vassal Street,  
Seven Wells,  
Chennai - 600 001.

**ATTESTED**

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

Copy to:

3. The Commissioner of Customs, Anna International Airport, Chennai.
4. The Commissioner of Customs (Appeals-I), Custom House, Chennai.
5. Sr. P.S. to AS (RA), Mumbai.
- ✓ 6. Guard File.
7. Spare Copy.

