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GOVERNMENT OF INDIA
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)
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F.No. 373/95/B/17-RA

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Date of Issue 13/12/2018

ORDER NO. ¹⁰³⁰ /2018-CUS (S Z) / 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. Dharshini Sivakumar

Respondent : Commissioner of Customs (Airport) Tiruchirapalli.

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), Trichy.



ORDER

This revision application has been filed by Smt. Dharshini Sivakumar (herein referred to as Applicant) against the Order in Appeal No. 58 & 59/2017-TRY (CUS) dated 19.04.2017 passed by the Commissioner of Customs (Appeals), Cochin.

2. On 30.08.2015 the officers of AIU Trichy intercepted the Applicant, a Malaysian citizen who arrived at the Trichy Airport, as she was walking through the Green channel. Examination of her person resulted in the recovery of one gold chain and eight bangles totally weighing 508.4 grams valued at Rs. 12,76,084/- (Rupees Twelve lakhs Seventy six thousand and Eighty four). The gold was worn by the Applicants on her neck and hands under the sweater worn by the Applicant.

3. After due process of the law vide Order-In-Original No. 58/2016 dated 03.08.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 3,00,000/- on the Applicant 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 (Appeals) who vide Order-In-Appeal No. 54 & 56/2017-TRY (CUS) dated 19.04.2017 reduced the penalty to Rs. 1,00,000/- and rejected the rest of appeal of the Applicant.

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

5.1 The order of the appellate authority has failed to consider that the adjudication authority wrongly held that the gold jewelry was found concealed even though the jewelry was worn by the Applicant; The gold ornaments worn on the neck, hands and waist cannot be termed as concealment as it is a normal way of wearing jewelry; The gold jewelry was not recovered through personal search but the Applicant herself revealed the gold when asked; the oral declaration made by the Applicant can be considered as a declaration as per section 77 of the Customs



Act, 1962; The Applicant has retracted her statement in her reply to the Show Cause notice; The gold jewelry was not brought for import but was supposed to be taken back to Malaysia, therefore the eligibility and requirement of foreign currency for customs duty are not relevant; Rule 3 of the tourist baggage allows personal jewelry; The import of gold is permitted and gold is not prohibited; The Appellate authority has failed to appreciate that there is a difference between absolute prohibition and restriction therefore absolute prohibition was not warranted.

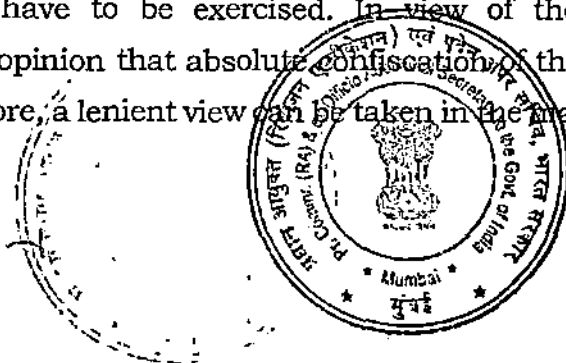
5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the absolute confiscation of the gold and release the gold on reasonable redemption fine and penalty for re-export in the interest of justice.

6. A personal hearing in the case was scheduled in the case, the Advocate for the Applicant Shri N. Manickam in his letter dated 05.11.2018 has stated that his applicants do not wish to be heard in person and in view of the same the Revision Application may be decided on merits.

7. The Government has gone through the facts of the case, The gold was not declared as required under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified.

8. However, the facts of the case reveal that the gold was worn on the neck and hands of the applicants, and though concealed under their worn clothes it cannot be termed as ingeniously concealed. Import of gold is restricted not prohibited. The Applicant has no past history of such misdemeanors. The ownership of the gold is not disputed. The Applicants claims to have made oral declaration of the gold. Thus the mere non-submission of the declaration cannot be held against the Applicant and dispossess her of the gold.

8. There are a 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. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore, a lenient view can be taken in the matter. The Applicant



has pleaded for redemption of the gold for re-export on payment of redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore liable to be set aside.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 508.4 grams valued at Rs. 12,76,084/- (Rupees Twelve lakhs Seventy six thousand and Eighty four) is allowed to be redeemed for re-export on payment of redemption fine of Rs.5,00,000/- (Rupees Five lakhs) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty imposed Rs. 1,00,000/- (Rupees One lakh)under section 112 of the Customs Act,1962. The Penalty imposed is appropriate.

10. Revision application is allowed on above terms.

11. So, ordered.

Ashok Kumar Mehta
20.11.18

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

ORDER No. ¹⁰³⁰/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

Smt. Dharshini Sivakumar
c/o Nazheerkhan s/o Serkhan,
No. 30, 12th Street, Bose Nagar,
Pudukottai, Pin 622 001.
Tamil Nadu.

Copy to:

1. The Commissioner of Customs, (Airport), Trichy
2. The Commissioner of Customs (Appeals), Trichy.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

