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SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F.No. 373/54/B/16-RA | २३६०

Date of Issue 13/12/2018

ORDER NO. <sup>1036</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 : Smt. Sharfunnisa

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. 122/2016 dated 29.02.2016 passed by the  
Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Smt. Sharfunnisa (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 122/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

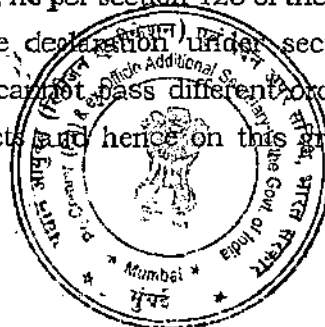
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 03.05.2015. She was intercepted as she was walking out after passing the green channel and examination of her person resulted in the recovery of two gold chains and two gold kadas totally weighing 349 gms valued at Rs. 9,42,300/- (Rupees Nine lakhs Forty two thousand and Three hundred). The gold chains and kadas were worn by the Applicant on her hands and neck.

3. After due process of the law vide Order-In-Original No. 214/2015-16 AIRPORT dated 07.08.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 85,000/- under Section 112 (a) 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. 122/2016 dated 29.02.2016 rejected the appeal of the Applicant.

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

5.1 The order of the appellate authority is contrary to the law and probabilities of the case; The applicant had not attempted to import any of the goods in contravention of any rules and regulations; It is not known on what basis the Customs authorities have concluded that the above goods are sensitive; The applicant had not concealed the gold springs and it should be allowed for re-export; There is no violations of the provisions of the Customs Act and the Commissioner had arrived at a decision without application of mind; Irrelevant facts have been considered and relevant facts have been left out; The Commissioner has failed to act in a bonafide manner and therefore the order is tainted; The entire goods were declared as required under section 77 of the Customs Act; The penalty of Rs. 85,000/- is arbitrary and unreasonable; The goods are not prohibited and it is mandatory for release on payment of fine as per section 125 of the Customs Act; As per section 125 of the Customs Act, 1962 The Applicant had filed a baggage declaration under section 77; The applicant submits that the department cannot pass different orders for each and every person for the same set of facts and hence on this ground also the absolute



confiscation is to be set aside; it is observed that in case of non-prohibited goods, held liable of confiscation shall be released on payment of fine the word "shall" makes it mandatory to impose fine in lieu of confiscation;

5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the Order in Appeal and allow the gold for re-export or pass further or other orders as deem fit and proper in the facts and circumstances of the case.

5. A personal hearing in the case was scheduled in the case, the Advocate for the respondent Shri A. K Jayaraj Advocate for the Revision Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for a lenient view in the matter and re-export of the gold and that the Revision Application be allowed as there was no ingenious concealment of the gold.

6. The Government has gone through the facts of the case. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. The Applicant had cleared the Green Channel. However, there is no allegation that the impugned gold was indigenously 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. Mere non-submission of the declaration cannot be held against the Applicant.

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 349 gms valued at Rs. 9,42,300/- (Rupees Nine lakhs Forty two thousand and Three hundred) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 3,50,000/- (Rupees Three lakhs Fifty thousand ) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty of Rs. 85,000/- (Rupees Eighty five thousand ) is reduced to Rs. 70,000/- (Rupees Seventy thousand) under section 112(a) of the Customs Act, 1962.



10. The impugned Order in Appeal is modified as detailed above. 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. <sup>1036</sup> /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30-11-2018

To,

Smt. Sharfunnisa  
c/o M/s A.K. Jayaraj, Advocate  
New No. 3, Old No. 2, 1<sup>st</sup> Floor,  
Thambusamy Road,  
Kilpauk, Chennai 600 010.

Copy to:

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

