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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. 373/354/B/14-RA/1412

Date of Issue 23/03/2018

ORDER NO. 106/2018-CUS (SZ) / ASRA / MUMBAI / DATED 15.03.2018 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. Najeema

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 1660/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals) Chennai.



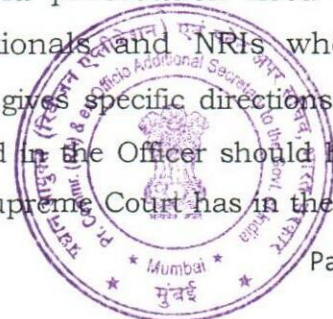
ORDER

This revision application has been filed by Smt. Najeema (herein referred to as Applicant) against the Order in Appeal C. Cus. no. 1660/2014 dated 08.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen arrived at the Chennai Airport on 17.01.2014. Examination of her person resulted in the recovery of a seven gold bangles totally weighing 645 gms totally valued at Rs. 18,15,675/-. After due process of the law vide Order-In-Original No. 133/2014 -AIU dated 27.05.2014, Original Adjudicating Authority absolutely confiscated the gold bangles referred to above under section 111(d) and 111(l) of the Customs Act, 1962 read with section 3(3) of the Foreign trade (D &R) Act, 1992. A Penalty of Rs. 1,75,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No.1660/2014 dated 08.09.2014 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application inter alia on the following grounds that; the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; that the Applicant had worn the gold bangles, and it is her personal belongings and was not brought for commercial trade; Being a foreign national she was not aware of the law; She was all along under the control of the Customs officers at the red channel and had not crossed the green channel; and as the jewelry was worn by the Applicant, the same was visible and she showed it to the officer therefore the question of declaration does not arise; that the gold bangles are old and used therefore the worn gold jewelry should have been allowed for re-export without redemption fine and penalty. But the officers proceeded to detain the jewelry because it was not declared; the question of eligibility to import gold by a foreigner does not arise; There was no ingenious concealment of the gold; section 111 d, l, m and o are not attracted in the case; As per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 has stated that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared; CBEC circular 9/2001 gives specific directions stating that a declaration should not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card; The Hon'ble Supreme Court has in the case of



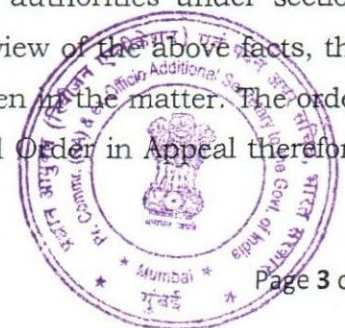
Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions, the authorities therefore should have allowed re-export by imposing lesser fine and penalty..

The Revision Applicant cited various assorted judgments and boards policies in support of re-export in support of his case and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, she must face the consequences. She was repeatedly questioned but she chose not to declare the gold. A written declaration of the gold bangles was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had she not been intercepted she would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant was intercepted before he exited the Green Channel. The gold was worn by the Applicant. hence, there was no ingenious concealment of the goods, however the quantity of the gold recovered is pretty high. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant. The absolute confiscation of the gold is therefore harsh and unjustified. 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 a lenient view can be taken in the matter. The order of absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore



needs to be modified and the confiscated gold jewelry is liable to be allowed for re-export on payment of redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold weighing 645 gms valued at Rs. 18,15,675/- (Eighteen lacs fifteen thousand Six hundred and seventy five) for re-export on payment of redemption fine of Rs. 10,00,000/- (Rupees Ten lacs). Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 1,75,000/- (Rupees One lac Seventy five thousand) to Rs 1,50,000/- (Rupees One lac fifty thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal stands modified to that extent.

10. Revision application is partly allowed on above terms.

11. So, ordered.

(Signature)
15.03.2018

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

ORDER No. 106/2018-CUS (SZ) /ASRA/MUMBAI

DATED 15.03.2018

To,

Smt. Najeema
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

(Signature) 23/3/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

