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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. 373/268/B/14-RA | 1413

Date of Issue 23/3/2018

ORDER NO. 107/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 16.03.2018 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. Mary Aldo Malarvili

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. 995/2014 dated 20.06.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

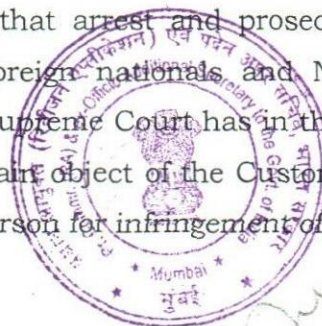
This revision application has been filed by Smt. Mary Aldo Malarvili against the order no C.Cus No. 995/2014 dated 20.06.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen arrived at the Chennai Airport on 04.12.2012. She was intercepted while proceeding towards the Green Channel. Examination of her hand baggage and person resulted in the recovery of unfinished crude gold jewelry totally weighing 313.5 gms totally valued at Rs. 9,25,138/- (Nine lac Twenty five thousand One hundred and thirty eight). The Applicant was arrested and remanded to judicial custody. After due process of the law vide Order-In-Original No. 836/2014 dated 05.12.2013, Original Adjudicating Authority 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. The gold jewelry was however allowed re-export on a fine of Rs. 4,70,000/-. A Penalty of Rs. 1,00,000/- 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. 995/2014 dated 20.06.2014 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the grounds that;

4.1 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 chain and bangles, and it is her personal belongings and was not brought for commercial sale or 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; 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; 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.



4.2 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for reduction of 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 questioned by the officers but she chose not to declare the gold. Neither was there a written declaration of the gold jewelry 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 she exited the Green Channel. Part of the gold was worn by the Applicant and has been claimed as personal jewelry. Government observes that there was no ingenious concealment of the goods. 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 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, more so because she is a foreigner. The gold jewelry has been allowed for re-export on payment of redemption fine and penalty. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. Under the circumstances Government, holds that while imposing redemption fine and penalty the applicant can still be treated with a lenient view. The Applicant has pleaded for reduction of Redemption fine and penalty and Government is inclined to accept her plea.

8. Taking into consideration the foregoing discussion, the Government reduces the redemption fine imposed on gold jewelry weighing 313.5 gms valued at Rs.9,25,138/- ( Nine lac Twenty five thousand One hundred and thirty eight) from Rs. 4,70,000/- ( Four

lacs seventy thousand ) to Rs 3,00,000/- (Rupees Three 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. 1,00,000/- (Rupees One lac ) to Rs. 75,000/- (Rupees Seventy five 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.

*Ashok Kumar Mehta*  
16.03.2018

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

ORDER No. 107/2018-CUS (SZ) /ASRA/MUMBAI

DATED 16-03.2018

To,

Smt. Mary Aldo Malarvili

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

True Copy Attested

*Sankar San Munda*  
22/03/18  
SANKAR SAN 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, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

