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GOVERNMENT OF INDIA
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F.No. 373/185/B/2018-RA/4091

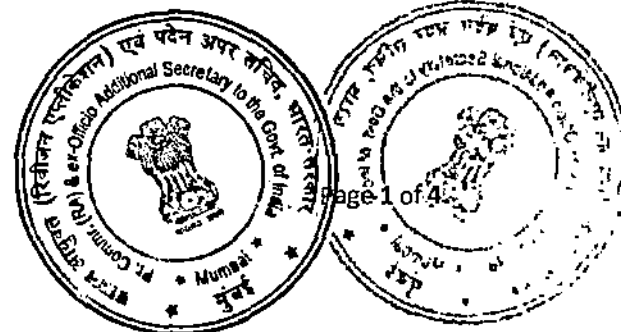
Date of Issue 10/10/19

ORDER NO. 11 /2019-CUS (SZ)/ASRA/MUMBAI DATED 30.9.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Smt. Vijaya Lakshmi Sundarajan

Respondent : Commissioner of Customs, Cochin.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal COC-CUS-000-APP-29/2018-19 passed by the Commissioner of Customs (Appeals), COCHIN.



ORDER

This revision application has been filed by Smt. Vijaya Lakshmi Sundarajan (herein after referred to as the Applicant) against the order in appeal No. COC-CUS-000-APP-29/2018-19 dated 28.06.2018 passed by the Commissioner of Customs (Appeals), Cochin.

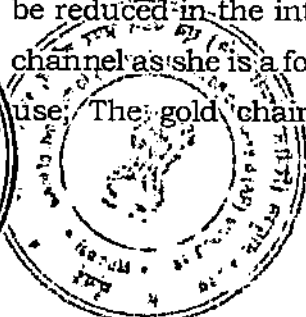
2. Briefly stated the facts of the case is that the applicant arrived at the Cochin International Airport on 11.06.2017. Examination of her baggage and person resulted in the recovery of two gold chains and eight bangles totally weighing 438.55 gms valued at Rs. 11,95,049/- (Rupees Eleven Lacs Ninety Five thousand and Forty Nine). The gold was worn by the applicant and covered by the full sleeved clothes worn by her.

3. The Original Adjudicating Authority vide Order-In-Original No. 100/11.06.2017 ordered confiscation of the impugned gold under Section 111 (d), (i) (l) and (m) of the Customs Act,1962, but allowed redemption of the same on payment of a redemption fine of Rs.50,000/- (Rupees Fifty thousand) and imposed penalty of Rs. 10,000/- (Rupees Ten Thousand) under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. COC-CUS-000-APP-28/2018-19 dated 28.06.2018 rejected the 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 is not valid as far as one gold chain and four gold bangles as it was her personal Thali and the rest was brought as a gift for her sisters daughters marriage; The Commissioner of Customs should have allowed re-export of the same as the Applicant is a Malaysian citizen; The demand pf duty of 36% and the redemption fine of Rs.50,000/- (Rupees Fifty thousand be set aside and the penalty be reduced in the interest of justice; The Applicant was using the green channel as she is a foreign citizen and it was bonafide jewelry for personal use. The gold chain was worn in addition to her mangalsutra and



inclusive of thali, it was not attempted to be consciously concealed and the entire gold was worn by her; ; as 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;

5.2 The Applicant submitted case law in favor of his case and prayed for setting aside the confiscation of the gold, set aside the redemption fine and penalty and allow re-export or any other order as may deem fit and proper in the circumstances of the case and thus render justice.

6. A personal hearing in the case was scheduled in the case, the Advocate for the Applicant Shri S Ranganathan appeared for the Applicant and submitted that there was no concealment, which has been recorded in the order in original.

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 applicant, and though concealed under their worn clothes it cannot be termed as ingeniously concealed. Import of gold is restricted not prohibited. One of the gold chain was a mangalsutra and a thali and four gold bangles were her personal jewelry. There is no past history of such misdemeanors. The ownership of the gold is not disputed. 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 a lenient view can be taken in the matter. The Applicant has pleaded for re-examination of the fact that one gold chain was her mangalsutra and thali and four gold bangles were her personal jewelry 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 Order of the Commissioner(Appeals). The impugned gold totally weighing 438.91 gms valued at Rs. 11,96,030/- (Rupees Eleven Lacs Ninety Six thousand and Thirty) is allowed for redemption fine and penalty. The redemption fine of Rs. 50,000/- (Rupees Fifty thousand) under section 125 of the Customs Act, 1962 is reduced to Rs. 20,000/- (Rupees Twenty thousand). The penalty imposed Rs. 10,000/- (Rupees Ten thousand) is reduced to Rs. 5,000/- (Rupees Five thousand) under section 112 of the Customs Act,1962.

10. Revision application is allowed on above terms.

11. So, ordered.

(SEEMA ARORA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 11/2019-CUS (SZ) /ASRA/

DATED 30.09.2019

To,

Smt. Vijaya Lakshmi Sundarajan
c/o Shri S Renganathan, M.A B. L. Advocate,
1B/5- Bharathiar 3rd Street, S.S. Colony, Madurai -625 016.

Copy to:

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

