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SPEED POST

GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 (DEPARTMENT OF REVENUE)
 8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
 Mumbai-400 005

F.No. 373/108/B/17-RA / १०००

Date of Issue 29.01.2021

ORDER NO. 11/2021-CUS (SZ)/ASRA/MUMBAI DATED 01.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Smt. S. Tirumeni

Respondent : Commissioner of Customs, Tiruchirappalli.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 26/2017 dated 14.02.2017 passed by the Commissioner of Customs & Central Excise (Appeals-2), Tiruchirappalli.



ORDER

This revision application has been filed by Smt. S Tirumeni (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal 26/2017 dated 14.02.2017 passed by the Commissioner of Customs & Central Excise (Appeals-2), Tiruchirappalli.

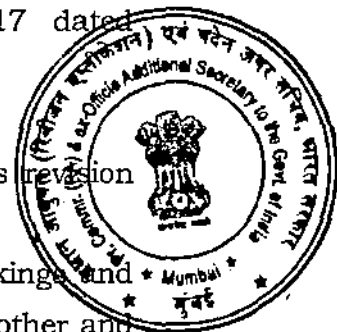
2. Briefly stated the facts of the case are that the Applicant, a domestic passenger arrived from Chennai on a flight which originated from Kuala Lumpur to Trichy via Chennai on 10.08.2015. On suspicion, she was intercepted while crossing the green channel. As she had not filed a declaration on any dutiable goods. When enquired whether she was carrying gold she replied in the negative. Scanning of her baggage indicated heavy metals. On personal examination the officers recovered fourteen gold bangles concealed with her personal effects. The gold bangles totally weighed 420 grams and valued at Rs. 10,56,300/- (Rupees Ten lacs Fifty six thousand Three hundred). The Applicant informed that a lady she met in Chennai had offered her Rs. 6000/- (Rupees six thousand) and an air ticket to clear the gold as a domestic passenger. The gold would be handed to her by a passenger travelling from Malaysia, in flight. Accordingly she received the gold and kept it in her hand baggage.

3. The Original Adjudicating Authority vide Order-In-Original No. 38/01.04.2016 ordered absolute confiscation of the impugned gold under Section 111 (d) (i) (l) & (m) of the Customs Act, 1962, and imposed penalty of Rs. 2,50,000/- (Rupees Two lacs fifty 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. 26/2017 dated 14.02.2017 rejected the appeal of the Applicant.

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

5.1 The gold was of Indian origin and had no foreign markings and belonged to their family and was carried by the Applicants mother and



daughter. But the officers, in order to sustain the seizure, made proceedings as if the jewelry was handed over by some unknown person. The Applicant has immediately retracted her statements.

5.2 The applicants appeal would not have been rejected, if caught wearing gold jewellery. The approved assayer Shri S.M. Baskaran in his certificate dated 10.8.15, never mentioned presence of any foreign marking in the gold bangles and he inferred that the gold bangles were 24 carats by Touch Stone Method and not by any chemical Test.

5.3 The Lower Adjudicating Authority has erred in confiscating the gold bangles of Indian Origin knowing that the applicant was not a international passenger to invoke all the import conditions and Customs Regulations, also the lower appellate authority have fallen in line with the investigation/ show cause notice without application of judicial consideration.

5.4 The Department has not identified any so called international passenger who has handed over the subject gold bangles to the applicant. The adjudicating authority blindly supported the mahazar proceedings and statement without any tangible and corroborative evidence.

5.5 The officers made a statement to that effect that the gold bangles were handed over by unknown person on board the aircraft. It is always a proven evidence that if "Giver" at Chennai and "Receiver" in Trichy were apprehended and statements recorded with proof for the origin of the gold bangles, then the seizure could be sustained. The Department conveniently shut down its investigation by simply relying the mahazar and statement which was retracted by the Applicant vide her letter 10.8.15.

5.6 The appellate authority is aware that sensing the harassment made to domestic passengers on board the foreign run Transit Flight has issued a Circular No.08/2016 customs dated 08.03.2016 conveying that "Domestic Passengers who board International Flights in the domestic leg are not required to file the Customs Declaration Form" As such reliance on a customs declaration form for domestic passenger without any corroborative evidence needs to be struck. It could be seen from the investigation that the Customs Escort Officer was not at all examined. The Lower Adjudicating Authority with Revenue based mind is trying to



sustain the charges with the mahazar and statement which was retracted without any delay.

5.7 The Applicant cited case laws in her favour and in view of the above proceedings in question may be set aside and orders issued to for the redemption of the gold and set aside the personal penalty and thus render justice.

6. Personal hearings in the case were scheduled online on 08.12.2020, 15.12.2020 and 22.12.2020. Shri B. Kumar the Advocate of the Applicant in his letter dated 15.12.2020 requested for dispensing of the personal hearing as he did not have the technical facility to attend the online personal hearing.

6.1 In his written submissions he submitted that, the Applicant was a domestic passenger travelling with her mother and daughter from Chennai to Trichy, The flight time from Chennai to Trichy is only 50 mins and the chance of handing the gold jewelry was remote especially in the presence of a Customs Escort Officer.

6.2 The mere suspicion and assumption without corroborative evidence and a self inflicting statement which was retracted cannot hold good in adjudicating a case.

6.3 Even the follow-up action and investigation did not yield any positive evidence against the Applicant.

6.5 The Applicant relied upon the decision of the Tripura High Court reported in 2020 (374) ELT A038 (Tripura) and the decision of the Hon'ble Tribunal reported in 2019 (370) ELT 401 (Tri Kolkotta)

7. At the outset Government notes that the Applicant has a very modest background and she does not have the wherewithal to purchase the impugned gold in such huge quantity. The investigations conducted by the Customs authorities in conducting a search operation of her residential premises and the fact that she does resides in a rental premise and her work profile also points to the fact that the gold she was carrying which was valued at above 10 lacs was much beyond her means. The applicant does not have any movable or immovable property and her bank had a balance of Rs. 3495/-. Being of such modest means it is therefore established that gold worth Rs. 10 lakhs that she has been found to be in possession of, could not have belonged to her. These above facts therefore lead us to the conclusion that the initial statements



savings bank account has a balance of only Rs. 3,495/-, which includes credits of gas subsidy. It is thus clear that the impugned gold was intended to be smuggled into India without payment of customs duty using the applicant as a carrier. If such gold is released on redemption fine it would result in making smuggling an attractive proposition since the applicant retains the benefit of redeeming such goods even when caught smuggling and works against deterrence. The modus operandi was meticulously planned and indicates mensrea so as to evade the payment of customs duty. The Applicant has also not produced any documents for licit possession of the gold. The Government therefore holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority in confiscating the impugned gold absolutely. The Revision Application is therefore liable to be dismissed.

11. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order No. 26/2017 dated 14.02.2017 passed by the Commissioner of Customs (Appeals-2), is upheld as legal and proper.

12. Revision Application is dismissed.

Shrawan
15/01/21
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. \\\2021-CUS (SZ) /ASRA/

DATED \\\ 01.2021

To,

Smt. S. Tirumeni, w/o Late Shri Saravanan, No. 2/88 C, Melachatram Paramakudi, Paramakudi (Tk), Ramnad Dist-623 707.

Copy To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri B. K. Associates, # 117/55 Egmore High Road, Egmore, Chennai 600 008.
3. Sr. P.S. to AS (RA), Mumbai.
- ✓ 4. Guard File.
5. Spare Copy.

