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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. 373/121/B/14-RA/1455

Date of Issue 03/04/2018

ORDER NO. 113/2018-CUS (SZ) / ASRA / MUMBAI / DATED 19.03.2018 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 : Shri Pothiyappan Marimuttu

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 No. 188 & 189/2014 dated 10.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Samsun Fareeda (herein referred to as Applicant) against the order C. Cus. No. 188/2014 dated 10.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, Indian citizen arrived at the Chennai International Airport on 13.06.2013. Examination of his baggage and person resulted in the recovery of a gold chain and earrings totally weighing 60 gms totally valued at Rs. 1,56,570/-. After due process of the law vide Order-In-Original No. 691 Batch D dated 13.06.2013 the Original Adjudicating Authority ordered confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and allowed redemption of the gold jewelry on payment of a redemption fine of Rs. 79,000/- and also imposed penalty of Rs.16,000/- under Section 112 (a) of the Customs Act, 1962. Aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 188 & 189/2014 dated 10.02.2014 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; the Applicant submits that goods must be prohibited before export or import, non-declaration of the goods cannot become prohibited after import; the jewelry was worn by the Applicant and the same was visible and he showed it to the officer therefore the question of declaration does not arise; He was at the red channel all along at the arrival hall of Airport; the only case against the Applicant is that he did not declare the gold jewelry, the gold was not concealed in an ingenious manner, but the gold jewelry was worn by the Applicant and it is his personal belongings and was not for commercial trade;

4.2 It has also been pleaded by the Applicant that there is no allegation that the Applicant tried to pass through the green channel; 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, such an exercise was not conducted by the officers; The Hon'ble Supreme Court has in



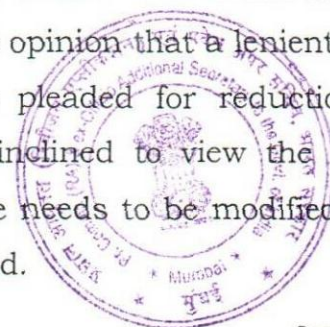
the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions; as the gold jewelry was visibly worn by the Applicant the same could have been released on payment of customs duty as the fine and penalty was not mandatory;

4.3 The Revision Applicant cited various assorted judgments 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 frequent traveller and was well aware of the law. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he 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 had not attempted to exit the Green Channel. The gold was worn by the Applicant, hence, there was no concealment of the goods, and neither was there a concerted attempt at smuggling these goods into India. 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. Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for reduction of redemption fine and penalty and Government is inclined to view the same favourably. The impugned Order in Appeal therefore needs to be modified and the redemption fine and penalty is liable to be reduced.



8. Taking into consideration the foregoing discussion, The redemption fine in lieu of confiscation gold totally weighing 60 gms, valued at Rs. 1,56,570/- (Rupees One lac fifty six thousand five hundred and seventy) is ordered to be reduced from Rs. 79,000/- (Rupees Seventy Nine thousand) to Rs. 50,000/- (Rupees Fifty thousand). Government also reduces the personal penalty imposed on the Applicant from Rs. 16,000/- (Rupees Sixteen thousand) to Rs. 10,000/- (Rupees Ten thousand) under section 112(a) of the Customs Act, 1962. The duty as applicable shall be paid accordingly.

10. So, ordered.

(Handwritten Signature)
19.03.18

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

ORDER No. 113/2018-CUS (SZ) /ASRA/ MUMBAI

DATED 19.03.2018

To,

Shri Pothiyappan Marimuttu
C/o Shri S. Palinikumar, Advocate,
No. 10, Sukurama Street,
Second Floor,
Chennai -600 001.

True Copy Attested

(Handwritten Signature)
22/3/18

Copy to:

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

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

