373/227 & 234/B/14-RA REGISTERED SPEED POST



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

F.No. 373/227 & 234/B/14-RA 1071

Date of Issue 06.02.2018

ORDER NO. 12-13/2018-CUS(SZ)/ASRA/MUMBAI DATED.31.01.2018

OF THE GOVERNMENT OF INDIA PASSED BY SHR! ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant :Smt. Fathima Ifsa Akil and Shri Mohamed Akil Madarsha.

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 20 & 21 dated 25.04.2014 and 128/2014 dated 22.05.2014 passed by the Commissioner of Customs (Appeals), Bangalore.



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<u>Order</u>

The officers of the Directorate of Revenue Intelligence on prior information intercepted Smt. Fathima Ifsa Akil and Shri Mohamed Akil Madarsha (hereinafter referred to as the applicants) while they were exiting the green channel of the Customs area of Bangalore International Airport. When questioned they informed the said officers that they were Sri Lankan nationals and were not carrying any valuable goods. Personal search of Smt. Fathima Ifsa Akil resulted in seizure of six solid crude gold bangles and one gold chain totally weighing 721.169 gms of gold jewellery valued at Rs.22,78,375/-. In her statement the Applicant informed that her husband Shri Mohamed Akil Madarsha gave her the gold jewelry which she wore on the flight and after disembarking her husband would take back the gold jewelry. Personal search of Shri Mohamed Akil Madarsha resulted in seizure of 80.200 gms of crude gold jewelry chain worn on his neck valued at Rs. 2,53,191/-. In his statement he stated that the gold jewellery which was seized from his wife was sourced by him from either Singapore or Middle East as the same was available at a reasonable price and that the gold jewellery would be sold to traders in Bangalore or Chennai. Both the Applicants admitted concealing the gold jewelry with an intention to evade payment of Customs duty. They were arrested and produced before the Economic Offences Court, Bangatore and remanded to judicial custody and subsequently released on bail.

2. The applicants were duly issued with a show cause notice and the lower Adjudicating Authority passed the impugned order absolutely confiscating the gold jewelry of both the Applicants and imposed a penalty of Rs. 3,00,000/- on Smt. Fathima Ifsa Akil and a penalty of Rs.50,000/- on Shri Mohamed Akil Madarsha. Being aggrieved by the impugned order of the lower Adjudicating Authority, the applicants filed an Appeal before the Commissioner of Customs (Appeals), Bangalore. The Commissioner of Customs (Appeals), Bangalore finding no merit in their Appeal vide Order in Appeal No. 20 & 21 dated 25.04.2014 and No. 128/2014 dated 22.05.2014 rejected the Appeals.

3. Being aggrieved by the impugned order of the Commissioner of Customs (Appeals), Bangalore, The Applicants have filed these Revision Applications interalia on the following grounds;



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3.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.

3.2 that the seized gold jewelry was purchased in the previous yearand the applicant appellant was wearing the same more than several months.

3.3 The appellant further submits that they were all along under the control-of the officers of customs at the red channels and they did not pass through the green channel. Being a foreign national-they were not aware of Indian law.

3.4 It is an admitted fact that both the Applicants were wearing the seized gold jewelry and they had declared the same orally and had shown it to the officers at the time of interception, having seen the same and question of declaration does not arise.

3.5 The Applicants state that the only allegation against them is that they did not declare the gold jewelry at the time of interception of the interception of the officers, and as they were wearing the gold and it was visible to the naked eye the question of declaration does not arise.

3.6 that one of the main contention of the adjudication authority was, the appellant has not given reply to show cause notice. In this regard applicants submit that they had sent a reply to show cause notice to the adjudication authority on 04.06.2013 and the same has been duty received by the department.

The Revision Applicants have cited various assorted judgments wherein in support of her case, and prayed that the order of the Appellate Authority be set aside and permit the Applicant to re-export the gold jewelry on payment of a nominal redemption fine and personal penalty.

4. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed in the reply to the Show Cause Notice and cited the decisions of GOI/Tribunals in their favour and pleaded for re-export and reduction in redemption fine and penalty.



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5. The Government has carefully gone through the facts of the case. This is a case of the Directorate of Intelligence on prior information. The Applicants are both foreign nationals. The Applicants were intercepted while they were exiting the green Channel of the Customs area of the Bangalore International Airport. It is a fact that the gold was not declared by the Applicants, it appears that there may have been an attempt to evade duty. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. It is a fact that the same were not declared by the passenger as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

6. Government also holds there was no ingenious attempt of concealing the gold jewelry, in fact, the Mahazar dated 09.10.2012 recorded by the DRI officers clearly records that both the Applicants were wearing the gold jewelry seized. The Applicants have produced bills of the purchase of the gold jewelry from Colombo in Sri Lanka, bills are dated July August of the previous year, therefore the seized jewelry is not new and therefore, the Applicants ownership of the gold jewelry is not disputed. There is no evidence to show that it was brought for sale or brought for third person for monetary consideration. Government therefore holds that absolute confiscation of the seized gold harsh and not commensurate with the facts and circumstances of the case. Being foreigners, the discretion of allowing the gold for redemption under section 125 (1) of the Customs Act should have been extended by the Adjudicating Authority. There are a catena of judgments and various precedent orders passed by CESTAT/Government of India wherein seized gold has been released on appropriate redemption fine and penalty. As the applicants have requested for re-export on redemption fine and penalty. Government is inclined to accept the request. In view of the above mentioned observations, the Government also holds that a lenient view can be taken while imposing redemption fine and penalty upon the applicant.

8. In view of the above findings, Government sets aside the impugned orders in Appeal confiscating absolutely the gold jewelry and allows redemption of the same under section 125 of the Customs Act, 1962, for the purpose of re-export on payment of redemption fine including confiscation. Government allows the redemption of confiscated gold totally



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weighing 721.169 gms of gold jewellery valued at Rs.22,78,375/-. (Rupees Twenty two lacs, seventy eight thousand three hundred and seventy five)for re-export on payment of Rs. 5,00,000/- (Rupees Five lacs). Government also reduces the personal penalty imposed on the Applicant from Rs. 3,00,000/- (Rupees Three lacs) to Rs.2,00,000/- (Rupees Two lacs) under section 112(a) of the Customs Act,1962.

9. The Government allows the confiscated gold totally weighing 80.20 gms, valued at Rs.2,53,191/-. (Rupees Two Iacs, fifty three thousand one hundred and ninety one) to be redeemed for re-export on redemption fine of Rs. 50,000/- (Rupees Fifty thousand). Government also reduces the personal penalty imposed on the Applicant from Rs. 50,000/- (Rupees Fifty thousand) to Rs. 30,000/- (Rupees thirty thousand) under section 112(a) of the Customs Act, 1962.

10. The impugned order stands modified to that extent. Revision application is partly allowed on above terms.

11. So, ordered.

When below

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

ORDER No. /2018-CUS (SZ)/ASRA/ Mum BAL

DATED 31-01.2018

To,

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Smt. Smt. Fathima Ifsa Akil, Shri Mohamed Akil Madarsha., Flat No. 6, Second Floor, No. 5 Akbarabad First Street, Koddambakkam, Chennai- 600 024.

True Copy Attested

SANKARSAN MUNDA

Asstt. Commissioner of Custom & C. Ex.

Copy to:

- 1. The Commissioner of Customs, A. I. Airport, Chennai.
- 2. The Commissioner of Customs (Appeals), Custom House, RajajiSalai Chennai.
- 3. Sr. P.S. to AS (RA), Mumbai.

Guard File.



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