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सत्यमेव जयते

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. 373/05/B/14-RA | 50

Date of Issue 04.04.2018

ORDER NO. 130/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21.03.2018 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. Siththi Savahira

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. 1637/2013 dated 26.11.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Smt. Siththi Savahira ( hereinafter referred to as the Applicant) against the order no C.Cus No. 1637/2013 dated 26.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, a Sri Lankan National arrived at the Chennai International Airport on 19.03.2013. Examination of her person resulted in the recovery of gold jewelry weighing 80 gms valued at Rs. 2,27,659/- ( Two lacs Twenty Seven thousand Six hundred and fifty nine ) concealed near the ankle of the applicant. The Original Adjudicating Authority vide his order 304 Batch A dated 19.03.2013 absolutely confiscated the gold jewelry referred to above under section 111(d), (l) (m) and (o) of the Customs Act, 1962 and section 3(3) of the Foreign trade (D &R) Act, 1992. A Penalty of Rs. 23,000/- 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. 1637/2013 dated 26.11.2013 rejected the Appeal.

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; She is a Sri Lankan citizen and knows only Tamil; she was all along under the control of the Customs officers at the red channel and had not crossed or attempted to cross the green channel; She was wearing the seized bangles ring and chain at the time she was intercepted near the baggage scan area; She had declared orally that she had brought gold jewelry and showed the same to the officers having shown the same question of declaration does not arise; ; that she arrived on 20.03.2013 and not 19.03.2013 as stated in the order in original; there is no record to state that the gold was not declared by the Applicant, therefore it appears that the absolute confiscation amounts to extraneous considerations; Gold is not a prohibited item and according to the liberalized policy gold can be released on payment of redemption fine and penalty; that section 111 d, l m, and o are not attracted in the case ;

4.2 The gold worn on leg was a gold leg chain which is old and she is used to wearing, in fact all the gold jewelry was old and personal not brought

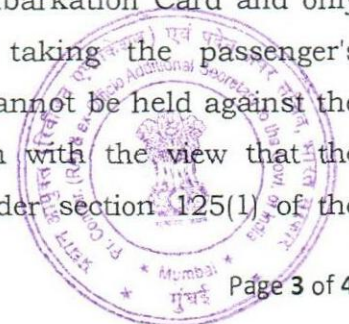
for commercial sale; There is no record that a personal hearing was accorded to the Applicant; the Applicant was not aware that it was an offence to bring gold without proper documents; the only allegation against her is that she did not declare the gold and being a foreigner it is only a technical fault; 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;

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for re-export of the gold jewelry and reduction of 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 well aware of the rules. 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. It is a fact that the gold jewelry was not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case do not allege that the Applicant was intercepted while exiting the Green Channel. The Applicant claims that the gold Bangles and the ring was worn by the Applicant, and the chain was worn on the Ankles handbag and there is no allegation of ingenious concealment of the gold. Even though the Applicant is a frequent traveller there are no previous offences registered against her. 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. 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. The absolute confiscation of the gold is therefore harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The order of absolute confiscation of the gold jewelry needs to be modified and the confiscated gold jewelry is liable to be allowed for re-export on payment of redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold jewelry for re-export in lieu of fine. The gold jewelry weighing 80 gms valued at Rs. 2,27,659/- ( Two lacs Twenty Seven thousand Six hundred and fifty nine ) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 80,000/- (Rupees Eighty thousand ) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs.23,000/- (Rupees Twenty three thousand) to Rs. 16,000/- ( Rupees Sixteen thousand ) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

10. So, ordered.

*(Handwritten Signature)*  
21.7.2018

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

ORDER No. 130/2018-CUS (SZ) /ASRA/MUMBAI

DATED 21.07.2018

To,

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

True Copy Attested

*(Handwritten Signature)* 27/7/18  
SANKARSAN 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.

