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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. 373/312/B/14-RA | S

Date of Issue 04.04.2018

ORDER NO. 131/2018-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. Abdul Wahab Akbar Sabia

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. 958/2014 dated 12.06.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Smt. Abdul Wahab Akbar Sabia (hereinafter referred to as the Applicant) against the order no C.Cus No. passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, arrived at the Chennai International Airport on 16.11.2012 from Malaysia. The Customs officer at the scan area noticing that she had carried jewelry directed her towards the Red Channel, However the Applicant on seeing the Customs officers busy with other passengers tried to slip through the Green Channel but due to timely intervention of the officers was again brought to the Red Channel. Examination of her baggage and person resulted in recovery of gold jewelry weighing 1757.3 gms valued at Rs. 52,29,725/- (Rupees Fifty two lacs, twenty nine thousand Seven hundred and twenty five). The Applicant was produced before the ACMM, Egmore, who remanded her to judicial custody till 17.11.2012. The Original Adjudicating Authority vide his order 183/2013 dated 01.03.2013 ordered confiscation of the gold jewelry referred to above under section 111(d), 111(l) and 111(m) of the Customs Act, 1962 read with section 3(3) of the Foreign trade (D &R) Act, 1992. The Gold jewelry was allowed re-export on payment of redemption fine of Rs. 26,00,000/- (Rupees Twenty Six Lacs). A Penalty of Rs. 5,00,000/- (Rupees Five lacs) under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

3. The Applicant, aggrieved by this order, filed a Writ Petition No. 29956/2013 dated 18.02.2014 in the Hon'ble High Court of Madras. The Hon'ble High Court of Madras dismissed the Writ Petition giving liberty to the Petitioner to file an Appeal against the impugned order in Original within two weeks from the date of receipt of the order and directed the Appellant Authority to consider the same on merits and pass orders in accordance with the law without going into the question of limitation. Accordingly 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. 958/2014 dated 12.06.2014 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia 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;
- 4.2 Her statement in Tamil states that after collecting her baggage, as directed, she approached the Red Channel where some officers were busy in the examination of other passengers and she was trying to move away she was brought back to the Red Channel, The statement does not say that she tried to pass the Green Channel. She was all along the red Channel. The translated version in English avers that she tried to exit through the Green Channel. The Respondent may be asked to produce the CCTV cameras video recording to ascertain the truth;
- 4.3 The only allegation against her is that she did not declare the gold jewelry and it was only a technical fault. She brought gold as she had come to attend a close relatives marriage and also to look out for a match for her daughter;
- 4.4 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;
- 4.5 The Order in Original clearly admits that she is an eligible Passenger to import one kilogram of gold on concessional rate of duty and there was no reason to go through the Green Channel;
- 4.6 As she was an eligible passenger and she intended to take back her jewelry after attending the wedding, back to Malasia, the Original adjudicating authority should have allowed her re-export on reduced redemption fine and penalty;
- 4.7 She is not involved in any previous offence. The only allegation against her is that she brought gold jewelry and attempted to move away from the Red Channel;
- 4.8 The Applicant further pleaded that as per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 states that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared. Further, The Hon'ble Supreme Court has

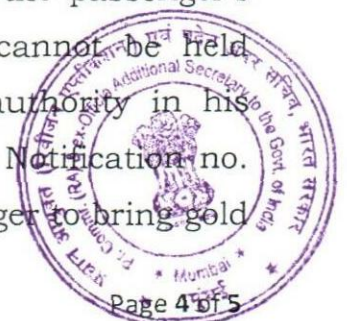
in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions;

4.9 The Applicant finally prays that the redemption Fine of Rs. 26,00,000/- is 50% of the value of the gold and the Penalty of Rs. 5,00,000/- is 10% of the value of the gold and pleaded that the same is very high and unreasonable the requested that same be reduced substantially and reasonably and thus render Justice.

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 carefully gone through the facts of the case. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and if the officers were not vigilant in intercepting her, she 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 was intercepted near the baggage scan area and as it was revealed that she had brought gold she was directed to proceed to the Red Channel. The gold jewelry was recovered from the Applicants handbag and part of the gold jewelry was worn by the Applicant. There was no ingenious concealment of the gold. 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. Further, the Original Adjudicating authority in his order has noted that she is a first time offender and as per Notification no. 26/2012 dated 18.04.2012 the Applicant is an eligible passenger to bring gold

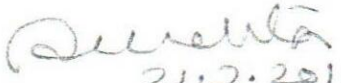


at concessional rate of duty. In view of the above facts, the Government is of the opinion that a lenient view can be taken while imposing redemption fine and penalty in the matter. The impugned Order in Appeal therefore is liable to be modified.

8. Taking into consideration the foregoing discussion, Government reduces redemption fine imposed on the confiscated gold jewelry for re-export in lieu of fine. The redemption fine on gold jewelry weighing 1757.3 gms valued at Rs. 52,29,725/- (Rupees Fifty two lacs, twenty nine thousand Seven hundred and twenty five) is reduced from Rs. 26,00,000/- (Rupees Twenty Six Lacs) to Rs. 18,00,000/- (Rupees Eighteen lacs). Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 5,00,000/- (Rupees Five lacs) to Rs. 4,00,000/- (Rupees Four lacs) 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.


21.02.2018

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

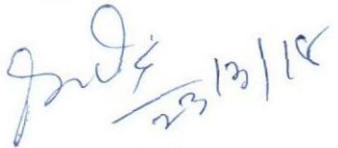
ORDER No. 131/2018-CUS (SZ) /ASRA/MUMBAI

DATED 21-02-2018

To,

True Copy Attested

Smt. Abdul Wahab Akbar Sabia
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.


23/02/18

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.
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