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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. 373/187/B/14-RA / 127

Date of Issue 04.04.2018

ORDER NO. 133/2018-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. Hassan Mohideen Mohidaumma

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. 310-312/2014 dated 25.02.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Smt. Hassan Mohideen Mohidaumma (hereinafter referred to as the Applicant) against the order no C.Cus No. 310-312/2014 dated 25.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, a Sri Lankan citizen had arrived at the Chennai International Airport on 11.08.2012. Examination of her baggage resulted in recovery of gold jewelry weighing 403.9 gms valued at Rs. 11,42,285/- (Rupees Eleven lacs Forty two thousand Two hundred and eighty five) and 4 (four) Sony Ericson Xperia mobile phones totally valued at Rs. 56,000/- (Fifty Six thousand) . The original Adjudicating Authority vide his order 709/2014 Batch A dated 15.10.2013 absolutely confiscated the gold jewelry referred to above and the 4 Sony Ericson Xperia mobile phones 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. A Penalty of Rs. 2,00,000/- 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. 310-312/2014 dated 25.02.2014 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; She is the owner of the gold and she has not brought it for a third party, it was her personal belongings and was not for commercial trade; the question of eligibility does not arise as the Applicant is a foreigner; The sections 111 (d), (l), (m) and (o) are not attracted as no offence is constituted; She was instructed by the officer to fill up the declaration card stating that she had no dutiable goods; there are no specific allegations that she had crossed

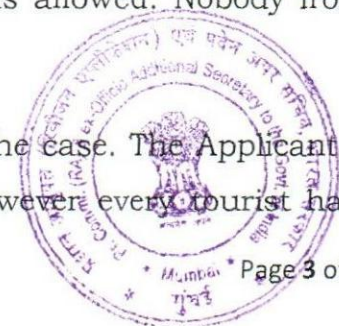
the green channel she was intercepted near the baggage scan area, the only allegation against her is that she did not declare the gold jewelry and it was only a technical fault; the gold jewelry was carried by the Applicant; and she showed it to the officer therefore the question of declaration does not arise, the facts can also be ascertained through the CCTV video record;

4.2 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; 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; 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; the officers proceeded to detain the jewelry because it was not declared; the gold was not concealed in an ingenious manner, the authorities should have allowed re-export by imposing lesser fine and penalty; Section 125 (2) of the Customs Act 1962 clearly mandates that option has to be given to the owner of the goods and in cases where the owner is not known the person from whose possession the such goods have been seized.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of re-export in support of her case and prayed for permission to re-export the gold on payment of nominal 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.

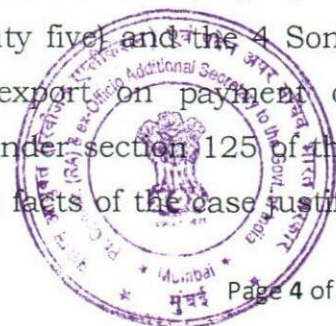
6. The Government has gone through the facts of the case. The Applicant is a foreign national and a frequent traveller to India. However every tourist has to



comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, she must face the consequences. The Order in Original also mentions that the Applicant had in an earlier occasion tried to clear one gold bangle valued at Rs. 4,26,155/- which was allowed re-export. It is a fact that the gold jewelry were 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 state that the Applicant was intercepted before she exited the Green Channel. The gold jewelry was recovered from the Applicants handbag and 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. 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 and the seized Sony mobile phones in the impugned Order in Appeal therefore needs to be modified and the confiscated gold jewelry and the phones are 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 and the Sony mobile phones for re-export in lieu of fine. The confiscated gold jewelry is allowed for re-export in lieu of fine. The gold jewelry weighing 403.9 gms valued at Rs. 11,42,285/- ((Rupees Eleven lacs Forty two thousand Two hundred and eighty five) and the 4 Sony mobile phones is ordered to be redeemed for re-export on payment of redemption fine of Rs. 4,00,000/- (Rupees Four lacs) 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.2,00,000/- (Rupees Two lacs) to Rs. 1,50,000/- (Rupees One lac fifty 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.


 21-7-2018
 (ASHOK KUMAR MEHTA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 133/2018-CUS (SZ) /ASRA/MUMBAI DATED 21.02.2018

To,

Smt. Hassan Mohideen Mohidaumma
 C/o S. Palanikumar, Advocate,
 No. 10, Sunkurama Chetty Street,
 Opp High court, 2nd Floor,
 Chennai 600 001.

True Copy Attested


 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.



