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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. 373/186/B/14-RA/16

Date of Issue 04.04.2018

ORDER NO. 140/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.03.2018 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 Sithie Fazmila Mohamed Muzamil

Respondent : Commissioner of Customs(Airport), Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 11/2014 dated 16.04.2014 passed by the Commissioner of Customs (Appeals) Bangalore.



ORDER

This revision application has been filed by Smt. Sithie Fazmila Mohamed Muzamil (herein after referred to as the Applicant) against the order no C. Cus No. 11/2014 dated 16.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

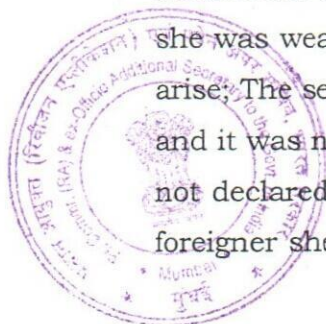
2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen arrived at the Chennai Airport on 19.11.2013 and was intercepted as she attempted to go through the Green Channel. Examination of her person resulted in the recovery of crude Gold jewelry totally weighing 482 gms valued at Rs. 15,52,040/- (Fifteen Lacs Fifty two thousand and forty). The Applicant was arrested and subsequently released on bail. After due process of the law vide Order-In-Original No. 92/2013 dated 18.10.2013 Original Adjudicating Authority absolutely confiscated the gold jewelry under section 111 (d) (l) (m) and (o) of the Customs Act, 1962 read with section 3(3) Foreign Trade (D & R) Act, 1992 and also imposed penalty of Rs. 2,50,000/- under Section 112 (a) and a penalty of Rs. 114 AA of the the Customs Act, 1962.

3. Aggrieved with the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus 11/2014 dated 16.04.2014 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application inter alia on the following grounds that;

4.1 that the order of the appellate authority is bad in law, weight of evidence and probabilities of the case; that the Respondents failed to see that the seized gold chain is used, old and regularly worn; She was all along at the red channel under the control of the officers and she had not crossed the green Channel; Being a Muslim she was wearing a Burqa and it was not for concealing the gold; She was wearing the gold and there was no ingenious concealment of the gold; 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;

4.2 The Applicant further pleaded that; she was instructed to fill up the declaration card as if she had nothing to declare, but she showed the gold jewelry she was wearing and having shown the gold the question of declaration does not arise; The seized gold belonged to her family and she had purchased it in Colombo and it was not for commercial sale; The only allegation against her is that she had not declared the gold but having worn it it was visible to the naked eye; Being a foreigner she was not aware of Indian Law; she has retracted her statements and



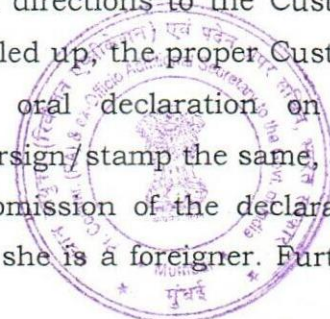
claims the gold; and therefore section 111 (d) (l) (m) and (o) of the Customs Act, 1962 are not applicable; Even assuming without admitting that the applicant did not declare the gold, it is only a technical fault and being a tourist she should have been pardoned; the applicant requested to take back the gold which was denied; 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;

4.3 The Revision Application cited various assorted judgments and boards policies in support of re-export and in support of her case and prayed for permission to re-export the gold jewelry and reduce the redemption and personal penalty and thereby 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 gone through the facts of the case. 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. The Applicant is a frequent traveller and a written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had she not been intercepted 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 though the Applicant is a frequent traveller and yet there is no previous offence, this is the first offence of the Applicant. The Applicant was arrested and subsequently released on bail. There was no ingenious concealment of the gold jewelry, and the gold jewelry was worn by the Applicant and was visible. 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 more so because she is a foreigner. Further,



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 order of absolute confiscation of the gold bits in the impugned Order in Appeal therefore needs to be set aside and the confiscated gold bits are liable to be allowed for re-export on payment of redemption fine. Government, also holds that while imposing redemption fine and penalty the applicant can also be treated with a lenient view. The impugned order in Appeal is therefore liable to be modified.

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 totally weighing 482 gms valued at Rs. 15,52,040/- (Fifteen Lacs Fifty two thousand and forty) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 5,00,000/- (Rupees Five lacs) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed on the Applicant. The penalty imposed on the Applicant is reduced from (Rupees Two lacs Fifty thousand) to Rs 1,50,000/- (Rupees. One lac Fifty thousand) under section 112(a) of the Customs Act,1962. The penalty imposed under section 114 AA of the Customs Act, 1962 is also reduced from Rs. 50,000/- (Rupees Fifty thousand) to Rs.25,000/- (Twenty five thousand).

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

10. So, ordered.



Ashok Kumar Mehta
27/3/18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 140/2018-CUS (SZ) /ASRA/Mumbai

DATED 27-03-2018

To,

True Copy Attested

Smt. Sithie Fazmilla Mohamed Muzamil
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

Sankarsan Munda
28/3/18

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

Copy to:

1. The Commissioner of Customs, Bangalore.
2. The Commissioner of Customs (Appeals), C. R. Bulilding, Bangalore.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.