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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. 373/27/B/14-RA/१५

Date of Issue 04.04.2018

ORDER NO. 141/2018-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. Anton Priyantha

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. 1769/2013 dated 04.12.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

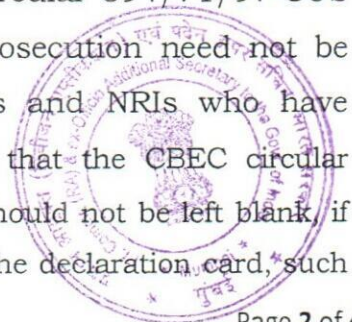
This revision application has been filed by Smt. Anton Priyantha (herein after referred to as the Applicant) against the order no C. Cus No. 1769/2013 dated 04.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen arrived at the Chennai Airport on 18.03.2013. Examination of her baggage resulted in the recovery of a gold jewelry totally weighing 83 gms totally valued at Rs. 2,37,404/-. (Two Lacs Thirty Seven thousand Four hundred and Four) After due process of the law vide Order-In-Original No. 234/ Batch A dated 03.03.2013 Original Adjudicating Authority 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. But allowed redemption of the gold jewelry on payment of a redemption fine of Rs. 1,20,000/- and also imposed penalty of Rs. 24,000/- under Section 112 (a) the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus 1769/2013 dated 04.12.2013 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia 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 is used and regularly worn: She was all along at the red channel under the control of the officers; Being a Foreign national she was unaware of Indian laws; she had worn the gold chain and she showed it to the officers and having seen the same the question of declaration does not arise; As the gold was old and used the adjudication authority should have allowed re-export of the gold; the order states that she is not an eligible passenger, however being a foreign citizen the question of eligibility does not arise; There was no ingenious concealment of the gold and therefore section 111 (d) (l) (m) and (o) of the Customs Act, 1962 are not applicable;

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; the Applicant also pleaded that the 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



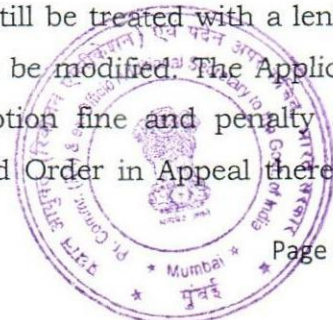
an exercise was not conducted by the officers; Even assuming without admitting that the applicant did not declare the gold , it is only a technical fault and being a tourist she should have been pardoned; the applicant requested to take back the gold which was denied.

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 without redemption fine or penalty or reduce the fine 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 this is the first offence of the Applicant. There was no ingenious concealment of the gold, and the gold jewelry is old and was worn by the Applicant and hence there was no concerted attempt at smuggling these gold into India. 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. Under the circumstances Government, holds that while imposing redemption fine and penalty the applicant can still be treated with a lenient view. The impugned order in Appeal is therefore liable to be modified. The Applicant has pleaded for re-export and for reduction of Redemption fine and penalty and Government is inclined to accept the plea. The impugned Order in Appeal therefore



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 Redemption fine imposed on gold jewelry weighing 83 gms totally valued at Rs. 2,37,404/- (Two Lacs Thirty Seven thousand Four hundred and Four) is reduced from Rs. 1,20,000/- (Rupees One lac Twenty thousand) to Rs. 85,000/- (Rupees. Eighty Five thousand) under section 125 of the Customs Act, 1962. 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. 24,000/- (Rupees Twenty four thousand) to Rs 15,000/- (Rupees Fifteen 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.

Ashok Mehta
27.3.18

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

ORDER No. 141/2018-CUS (SZ) /ASRA/Mumbai

DATED 27.03.2018

To,

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

True Copy Attested

Sankarsan Munda
28/3/18

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.

