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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. 373/24/B/14-RA/02

Date of Issue 04.04.2018

ORDER NO. 144/2018-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. Fathima Riyana

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. 1770/2013 dated 04.12.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

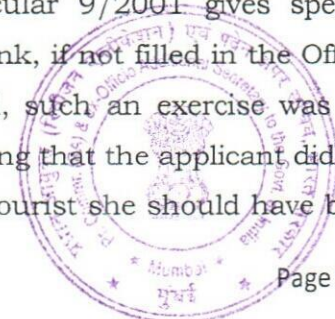
This revision application has been filed by Smt. Fathima Riyana (herein after referred to as the Applicant) against the order no C. Cus No. 1770/2013 dated 04.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

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 11 crude gold bits weighing 126 gms totally valued at Rs. 3,57,868/- (Three Lacs Fifty Seven thousand Eight hundred and Sixty eight) and a gold chain weighing 34 gms totally valued at Rs. 96,755/-. (Ninety Six thousand Seven hundred and Fifty five). After due process of the law vide Order-In-Original No. 306/ AIU A dated 20.03.2013 Original Adjudicating Authority absolutely confiscated the gold bits and confiscated the gold chain 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 chain on payment of a redemption fine of Rs. 50,000/- and also imposed penalty of Rs. 50,000/- under Section 112 (a) the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus 1770/2013 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 chain is used and regularly worn: She was all along at the red channel under the control of the officers; she was wearing the gold chain and the gold bits were kept in her baggage at the time of interception near the scan area she showed the gold to the officers and having seen the same the question of declaration does not arise; she has retracted her statements and claims the gold; 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; she has never claimed that she is an eligible passenger and being a foreign citizen the question of eligibility does not arise: the request for re-export of the gold was not considered.

4.2 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



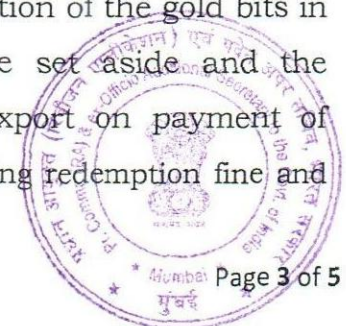
pardoned; the applicant requested to take back the gold which was denied; The object of the Customs Act, 1962 is to collect revenue and not to punish.

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 bits 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 this is the first offence of the Applicant. There was no ingenious concealment of the gold bits, and the gold chain 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 bits for re-export in lieu of fine. The gold bits weighing 126 gms totally valued at Rs. 3,57,868/- (Three Lacs Fifty Seven thousand Eight hundred and Sixty eight) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 1,30,000/- (Rupees One Lac Thirty Thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the redemption fine and penalty imposed in respect of the Gold chain allowed for re-export. Government reduces the redemption fine imposed on the confiscated gold chain weighing 34 gms totally valued at Rs. 96,755/- (Ninety Six thousand Seven hundred and Fifty five) from Rs. 50,000/- (Rupees Fifty thousand) to Rs.35,000/- (Rupees Thirty Five thousand). The penalty imposed on the Applicant is also reduced from Rs. 50,000/- (Rupees Fifty thousand) to Rs.35,000/- (Rupees Thirty Five 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 Kumar Mehta
27.03.18

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

ORDER No. 144/2018-CUS (SZ) /ASRA/ MUMBAI DATED 27.03.2018

To,

Smt. Fathima Riyana
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.

