



REGISTERED
SPEED POST

F.No.373/99/B/13-RA-CUS
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.....24/1/16.....

ORDER NO. 16/2016-CUS DATED 24.02.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed under section 129 DD of the Customs Act , against the Order-in-Appeal No. C.Cus No. 1272/2013 dated 17.09.2013 passed by Commissioner of Customs (Appeal), Chennai

Applicant : Smt. Rismila Begam.

Respondent : Commissioner of Customs, (Airport) Chennai.

ORDER

This Revision Application is filed by Smt. Rismila Begam against the Order-in-Appeal No. C.Cus No. 1272/2013 dated 17.09.2013 passed by Commissioner of Customs(Appeals) Chennai, with respect to Order-in-Original No. O.S. No.164/Batch 'D' dated 09.02.2013 passed by Assistant Commissioner of Customs(Airport) Chennai.

2. Briefly stated facts of the case are that the applicant, a Srilankan National, had arrived at the airport, Chennai from abroad on 09.02.2013 and was found to carry 124 grams of gold jewellery valued at Rs.3,73,379/-. The applicant had not declared the impugned gold, but for the timely interception by the proper officers of Customs this would have gone un-noticed. Hence the impugned gold was confiscated by the lower adjudicating authority under the Customs Act, 1962 read with Section 3(3) of Foreign Trade (Development & Regulation) Act, 1992. The applicant was given an option to redeem the impugned gold for re-export on payment of fine of Rs.1,50,000/- under Section 125 of the Customs Act, 1962. Penalty of Rs.37,340/- under Section 112 (a) of the Customs Act, was also imposed on the applicant.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who vide his Order-in-Appeal dated 17.09.2013 rejected the appeal being devoid of merit.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 129 DD of Customs Act, 1962 before Central Government on the following grounds :

4.1 The Orders of the respondents are bad in law, weight of evidence and probabilities of the case.

4.2 Both the respondents failed to see that the true declaration made by the Applicant before the concerned officers at Airport and nothing concealed nor misdeclared by the Applicant.

4.3. The respondent ought to have seen that the applicant had no any bad antecedent in the past and further he brought the goods not for trading but for his relatives and friends in India as gifts for them.

4.4 Both the respondents have failed to see that the applicant had opted red channel to prove his bona fideness that he has got dutiable goods. However, the officers have totally ignored this and registered a case against the applicant.

4.5 The first appellate authority in an Appeal before it had not considered other relevant points and records but to modify and reduce redemption fine and penalty.

4.6 Under the above facts and circumstances of the case the applicant therefore prays that this Hon'ble Revisionary Authority may be pleased to set aside both the lower authorities orders and grant relief fully by set aside personal penalty of Rs. 37,340/- & redemption fine of Rs. 1,50,000/- and render justice.

5. Personal hearing was scheduled in this case on 07.09.15 & 13.10.2015. Neither the applicant nor respondent attended the hearing. On behalf of the applicant her authorized counsel Shri K. Mohmmad Ismail vide his letter dated 06.10.2015 has sought for the waiver of personal hearing and requested to treat his grounds of revision mentioned in his revision application as their written submission and arguments for Revision.

6. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Upon perusal of records, Government observes that the applicant brought the gold jewellery weighing 124 grams, valued at Rs. 3,73,379/- which was in her possession. She did not declare it to the Customs as required under Section 77 of the Customs Act, 1962 and was intercepted by the Customs Officer at green channel. Spot adjudication was conducted on having applicant's request for waiver of Show Cause Notice. During the course of hearing before the adjudicating authority the passenger admitted the fact that she had brought the impugned goods and attempted to walk through green channel without declaring to Customs under Section 77 of the Customs Act,1962. The impugned Order-in-Original ordered for the confiscation of the gold jewellery under Section 111(l) of the Customs Act, read with Section 3(3) Foreign Trade (Development & Regulations) Act, 1992 with an option to redeem the impugned gold for re-export on payment of fine of Rs, 1,50,000/- under Section 125 of the Act, ibid and a penalty of Rs. 37,340/- was imposed under Section 112(a) of the Act, ibid with the condition that the same shall be re-exported within one month from the issue of the order. Aggrieved by the Order-in-Original the applicant filed appeal before Commissioner (Appeals) which was rejected. Now the applicant has filed revision application on the grounds in para 4 above for setting aside personal penalty and redemption fine.

8. Government observes that the main contention of the applicant for revision is that the respondent failed to see the true declaration made by the applicant on reporting at red channel before the concerned Customs officers at airport and nothing was concealed nor misdeclared by the applicant. Applicant had no past record of offence and she brought the goods not for trading but as gifts for relatives and friends.

9. Government further observes that Commissioner (Appeals) upheld the Order-in-Original on the grounds that the passenger contravened the provisions of Section 77. He stated that as per Section 77 of the Customs Act, 1962 the onus of making a true declaration vests with the applicant as a passenger. In this case, the applicant did not make a declaration of the gold but attempted to smuggle the same by keeping them on her person and walking through the green channel with an intention to avoid detection by Customs.

10. Government notes that in the impugned Order-in-Original the record of personal hearing reads as under:-

“ Heard the pax. The goods were not declared by the passenger and hence would not have been discovered if not for interception by the proper officers of Customs. Hence the goods are liable for confiscation under Section 111(l) of the Customs Act, 1962 read with FT(D&R) Act, 1992”.

10.1 There is nothing on record to show that the said submission has been made under any pressure or duress. In fact it is undeniably a voluntary statement made by the applicant during the course of personal hearing granted in the interest of justice clearly admitting that the impugned gold jewellery weighing 124 grams brought by the applicant was not declared by her before the Customs Officer, thus she contravened the provisions of Section 77 of Customs Act, 1962.

10.2 Government opines that any oral submission made before the adjudicating authorities will be a material piece of evidence. In view of specific admission made by the applicant before the adjudicating authority, Government is inclined to hold that the applicant contravened the provisions of Section 77 of the Act, *ibid*.

11. Government places reliance on the following case laws:-

(i) Hon'ble Supreme Court has held in the case of Surjeet Singh Chhabra vs UOI reported as 1997 (84) ELT 646(SC) that statement made before Customs Officers though retracted within 6 days is an admission and binding. Since Customs Officers are not police Officers under Section 108 of customs Act, 1962.

(ii) The decision of the Hon'ble Madras High Court in the case of "Assistant Collector of Customs Madras-I vs. Goindasamy Ragupathy" 1998(98) ELT 50 (Mad.), in which the court held that the confessional statement under Section 108 even though later retracted is a voluntary statement and was not influenced by duress and is a true one”.

(iii) The confessional statement given before the Customs Officers are admissible evidence as they are not police officers. This view has been upheld by the Hon'ble Supreme Court in the case of Badaku Joti Savant vs. state of Mysore. [1978 (2) ELT J 323(SC)].

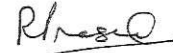
12. Government further finds that in view of the facts and circumstances of the case penalty under Section 112(a) of the Act has been rightly imposed on the applicant for the offence committed by the applicant. The quantum of penalty is reasonable and commensurate to the nature of the offence.

13. Government also finds no merit in the plea of the respondent to extend the benefit of free allowance to the passenger. As per Section 79 (2) read with Baggage Rules, 1998 the benefit can be extended to the passenger who brought the bonafide goods and truly declared to the Customs. In the instant case both the conditions were not fulfilled by the passenger.

14. Government holds that the impugned Order-in-Appeal does not merit any interference and is upheld.

15. Revision Application is rejected as being devoid of merit.

16. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

Smt.Rismila Begam,
Moore Mansion Moore Street,
Mannady,
Chennai-600-001

ATTESTED



ORDER NO. 16/2016-CUS DATED 24.02.2016

Copy to:

1. The Commissioner of Customs (Airport & Aircargo), Integrated Air Export Complex, Meenambakkam, Chennai-600027.
2. The Commissioner of Customs (Appeal), Customs House, Chennai-600001.
3. The Deputy Commissioner of Customs, Airport Chennai-600027.
4. Shri K. Mohamed Ismail , Advocate & Notary Public New No. 102, Linghi Chetty Street, Chennai-600001.
5. ✓ Guard File.
6. PA to JS (RA).
7. Spare Copy.

ATTESTED

(Shaukat Ali)
Under Secretary (RA)