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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. 373/81/B/14-RA/2

Date of Issue 11.04.2018

ORDER NO. 165/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 09.04.2018 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. K. Dhanalaxmi

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. 1779/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Smt. K. Dhanalaxmi (herein after referred to as the Applicant) against the order no C. Cus No. 1779/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 19.05.2013 and was intercepted as he attempted to go through the Green Channel without any baggage declaration at the Red Channel. Examination of her person resulted in the recovery of Gold necklace totally weighing 56 gms valued at Rs. 1,44,311/- (One Lac Forty four thousand Three hundred and eleven). After due process of the law vide Order-In-Original No. 604/ Batch D dated 19.05.2013 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. A penalty of Rs. 15,000/- was also imposed under Section 112 (a) of the Customs Act, 1962.

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. 1779/2013 dated 05.12.2013 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 was all along the red Channel under the control of the officers and did not pass through the green channel; She is the owner of the gold and she has not brought it for a third party, it was her purchased by her husband for the wedding of the Applicants sisters daughter and therefore personal belongings and was not for commercial trade; She carried a bill of purchase from a Singapore based gold jewelry firm and showed it to the officers, but it was not considered; She was wearing the gold necklace and it was visible and shown to the officers, having seen the same the question of declaration does not arise;

4.2 The Applicant further pleaded that this was her first visit abroad and she was not aware of the procedures; the hearing sheet has been filled up as per the whims and fancy of the officers and not as per the law; The sections 111 (d), (l), (m) and (o) are not attracted as no offence is constituted; 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;

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for redemption under section 125 of the Customs Act, 1962 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 redemption 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. 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 necklace was worn by the Applicant and there was no ingenious concealment of the gold. The gold is claimed by the Applicant and there is no other claimant. 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 in 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 gold jewelry weighing 56 gms valued at Rs. 1,44,311/- (One Lakh Forty four thousand Three



hundred and eleven) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 60,000/- (Rupees Sixty 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.15,000/- (Rupees Fifteen thousand) to Rs.10,000/- (Rupees Ten 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)

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

ORDER No. 165/2018-CUS (SZ) /ASRA/MUMBAI

DATED 09.04.2018

To,

Shri K. Dhanalaxmi
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.

