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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. 373/374/B/14-RA/1^V Date of Issue 11.04.2018

ORDER NO.167/2018-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. Maheswary

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. 1698/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Smt. Maheswary (herein after referred to as the Applicant) against the order no C. Cus No. 1698/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan national arrived at the Chennai Airport on 23.09.2012. She was intercepted while proceeding towards the exit of the Green Channel, without declaration at the Red Channel. Examination of her person resulted in the recovery of a gold thalli alongwith three pendants and three gold bangles totally weighing 173 gms totally valued at Rs. 4,75,383/- (Four lacs Seventy five thousand Three hundred and Eighty three). After due process of the law vide Order-in-Original No. 396/2014 Batch B dated 26.03.2014, Original Adjudicating Authority confiscated the gold chain referred to above under section 111(d) and 111(l) of the Customs Act, 1962 read with section 3(3) of the Foreign trade (D &R) Act, 1992, But allowed redemption on payment of redemption fine of Rs. 1,90,000/-. A Penalty of Rs.47,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

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. 1698/2014 dated 12.09.2014 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia 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; The Applicant's gold is old, she has been wearing it for several months; she was all along under the control of the Customs officers at the red channel and had not crossed the green channel; she was intercepted at the scan area, after immigration where the on being asked she made a declaration of the gold jewelry worn and handed over to the officers; the Applicant also orally declared and showed the gold chain and bangles, having seen the chain the question of declaration does not arise, therefore the respondents should have allowed the gold chain for re-export, but they proceeded to register a case; Being a foreign citizen the question of eligibility does not arise; Even assuming without admitting she did not declare the gold jewelry it is only a technical fault.

4.2 The Applicant further pleaded that there was no ingenious concealment of the gold; having declared and shown the gold, section 111 (d), (l), (m) and (o) is not attracted; 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; the worn gold jewelry should have been allowed for re-export without redemption fine and penalty. But the officers proceeded to detain the jewelry because it was not declared; Further, 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 Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for reduction of 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 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 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 the Applicant was intercepted before she exited the Green Channel. Government observes that the gold was worn by the Applicant and the same could be seen with the naked eye. The Applicant claims that she voluntarily declared the gold in his declaration. There was no ingenious concealment of the goods. 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 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, moreso because she is a foreigner. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export on reduced Redemption fine and penalty and Government is inclined to accept the plea. The Order in Appeal therefore is liable to be modified.

8. Government allows redemption of the confiscated gold chain for re-export in lieu of fine. The redemption fine imposed on the gold chain weighing 173 gms totally valued at Rs. 4,75,383/- (Four Lacs Seventy five thousand Three hundred and Eighty three) is reduced from 1,90,000/- (Rupees One lac Ninety thousand) to Rs. 1,50,000/-(Rupees One lac Fifty 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. 47,000/- (Rupees Forty Seven thousand) to Rs 40,000/- (Rupees Forty thousand) under section 112(a) of the Customs Act,1962.

9. The impugned order 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.167/2018-CUS (SZ) /ASRA/Mumbai DATED 09.04.2018

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

True Copy Attested

11/4/18

SANKARSAN MUNDA
Asstt. Commissioner of Customs & 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.