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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/214A,B,C/B/16-RA / 1040

Date of Issue 18.02.2021

ORDER NO. ¹⁷⁻¹⁸⁻¹⁹ /2021-CUS (SZ)/ASRA/MUMBAI DATED 27.01.2021 OF
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

Applicant : Smt. S. Jansi Rani
: Smt. Deepa Satishkumar
: Smt. Ekambaram Devi

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.Cus-I No.
263/2016 dated 27.06.2016 passed by the Commissioner
of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Smt. S. Jansi Rani, Smt. Deepa Satishkumar and Smt. Ekambaram Devi (herein referred to as the Applicants) against the order no. 263/2016 dated 27.06.2016 passed by the Commissioner of Customs (Appeals-I), Chennai. As the facts of the case are identical and these cases have been addressed in one Appellate order, these Revision Applications are being decided together.

2. Briefly stated facts of the case are that the Officers of Air Intelligence unit, Chennai on 09.08.2015 intercepted the applicants, who had arrived from Dubai as they were walking out of the green channel. The Applicants had declared the value of dutiable goods as nil. The search of their person resulted in the recovery of gold ornaments as detailed below. The gold jewelry was worn by them.

Sl. No.	Applicant	Impugned goods	Weight in grams	Total Value
1	S. Jansirani	One gold chain and eight gold Bangles	791	19,89,365
2	Deepa Satishkumar	One gold chain and eight gold Bangles	793	19,94,395
3	Ekambaram Devi	One gold chain and eight gold Bangles	788	19,81,820/-

3. The Original Adjudicating Authority, vide order No. 354,355 and 356 all dated 23.11.2015 absolutely confiscated the gold mentioned above under the provisions of the Customs Act, 1962. A Personal penalty of Rs. 2,00,000/- (Rupees Two lacs) each under section 112 (a) of the Customs Act, 1962 was imposed on each of the Applicants.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals-I), Chennai. The Commissioner of Customs (Appeals), vide his order No. 263/2016 dated 27.06.2016 rejected the Appeal.



5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that; the order of the Appellate authority is unjust unfair, unreasonable.

5.1 The false recording of fact that it is case of concealment, and incorrectly recording that the gold jewelry was concealed by the Applicants is totally false and contrary to facts on record.; that in the absence of any order issued under Sec. 11 (2) of the Customs Act or any order issued under the F.T (D&R) Act prohibiting the import of gold and that the non-declaration of gold cannot be reason for confiscation under Sec. 111 (d) of the Act and especially absolute confiscation is not justified.

5.2 The order has been passed without properly and judiciously considering any of the subtle legal grounds canvassed by the applicants before him and completely failing to take note of the various facts and law canvassed by her in the written submission filed before him.

5.3 The Appellate authority further was in gross error in recording the finding that the cross examination of the witnesses by the Advocate has not brought anything in favor of the applicant, whereas the written submissions filed on her behalf bring out the subtle inconsistencies in the department's claim which the appellate authority failed to consider in the proper perspective.

5.4 The finding recorded by the Appellate authority in para 9 that the crude gold jewelry is not acceptable as jewelry, but a modus operandi devised for smuggling gold into India by concealing bullion, by making it into crude form of jewelry and wearing it on person and therefore it is required to be treated as a deliberate concealment with an intent to smuggle the gold into India to avoid payment of the appropriate duty is not correct.

5.5 The Appellate authority further committed gross injustice in approving the finding of the lower adjudicating authority of not giving the option of redemption of the gold jewelry on the ground that the offence in this case is multidimensional exposes his total non-application of mind and bias as he failed to consider the provisions of Sec. 125 of the Customs Act which mandates for allowing the redemption of any non-prohibited



goods and which position of law he himself approved in his earlier order dated 04.03.16.

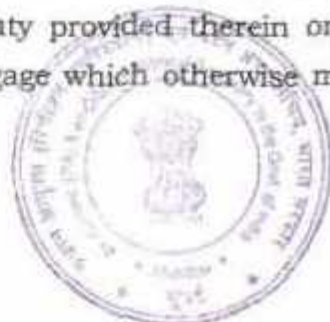
5.6 There was no concealment of the gold jewelry as the same was admittedly carried by the applicant in the normal course by wearing them on person just like any normal person would do, making it visible to the naked eye with absolutely no room for even presuming that the applicant attempted to smuggle the jewelry by resorting to concealment.

5.6. Gold as such is not an item prohibited for import and in fact notification No.117/92 dated 1-3-92 permits import of gold in any form (excluding ornaments studded with stone or pearls) not exceeding 10 Kgs brought as an item of baggage.

5.7. The applicant herself declared the gold jewelry to the officer at the conveyor belt itself, when she was intercepted and that no violation was committed by her in terms of Sec.77 of the Customs Act, 1962 since she did declare the gold jewelry she was wearing open to the naked eyes, which is much visible to the officer clearly evidencing to the fact that there could be absolutely no allegation of mis-declaration or non-declaration of the gold jewelry on her part for the reason of which also ought not to have approved the absolute confiscation of the jewelry under Sec.111 (d) and 111 (l) of the Customs Act

5.8. The Appellate authority committed gross error in recording the finding that the applicant had willfully engaged in smuggling of gold by violating provision of sec.77 of the Customs Act,1962 and Foreign Trade(D&R) Act,1992 when the facts on record is contrary to the said finding.

5.9 The Appellate authority was further in error in not appreciating the reliance placed by the applicant on the Customs Notification bearing No 12/2012-Customs dated 17.12.2012, as if the applicant is seeking the benefit of the said notification so as to hold that the applicant herein is not eligible to the benefit of the said notification on account of non-fulfillment of the conditions imposed therein, by totally failing to understand that the fulfillment of the condition imposed in the said notification was only for the availment of the concessional rate of duty provided therein on the import of the gold jewelry as an item of baggage which otherwise meant



that there is no bar in allowing the jewelry on payment of the duty at the tariff rate.

5.10 The Appellate authority committed gross error in not fairly exercising the judicial discretion conferred under Section 125 of the Customs Act by allowing the redemption of the jewelry on payment of appropriate duty at the tariff rate by levying a fine or at least the re-export of the said jewelry

5.11 The Appellate authority for the aforesaid reasons and for the reason of not establishing any criminal intent or negligence or defiance of law on the part of the applicants, was in gross error in upholding the confiscation of the gold jewelry and sustaining the penalty under Section 112 (a) of the Customs Act and for those reasons the impugned Order need to be set aside, in the interest of justice

6. Personal hearings in the case was held on 09.12.2019. Shri N. Viswanathan Advocate for the Applicants attended the said hearing. He reiterated the submissions in the Revision Application stating that there was no concealment and that the same Commissioner (Appeals) has allowed redemption in other cases. As there was a change in the revisionary authority, the case was again taken up for personal hearing on 22.12.2020. Shri N. Viswanathan Advocate again attended the hearings online and requested for release of the gold jewelry or allow re-export.

6.1 In his written submissions he stated that the Hon'ble Supreme Court in the case of Asian Food Industries as well as in the case of Atul Automation P. Ltd., and the Punjab & Haryana High Court in the case of Horizon Foods have drawn the distinction between prohibit, restrict or otherwise regulate as appearing in the FTDR Act and the customs Act and have held that the mere restriction of the goods under the Foreign Trade provision would not be prohibition under the Customs Act. Therefore, the interpretation placed by the original authority under Sec. 2 (33) of the customs Act by relying upon the judgment of the Supreme Court under the old Import control order has no application whatsoever.

6.2. Further stating, The reliance placed on the fact that the applicants are not passengers eligible to import cannot result in the gold brought by



them being held to be prohibited goods as the said term has been used for the only purpose of extending the concessional rate of duty to such passengers meaning that the other importers could get the release of the gold on payment of the merit rate of duty totally renders his finding baseless.

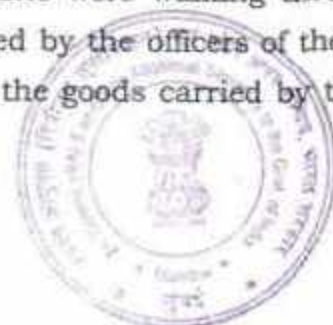
6.3 The above issue is also no more res-integra as the learned revisionary authority had already taken a decision to allow the redemption of the gold to the passenger under Sec. 125 of the Customs Act in his order reported in 2012 (276) E L T 129 (GOD following the judgment of the Hon'ble AP High Court in its judgment reported in 1997 (91) E L T 277 (AP) holding that it is mandatory to give option to a person found guilty to pay fine in lieu of confiscation

6.4 The findings recorded by both the lower adjudicating and appellate authority on facts are totally bereft of any truth and incorrect as the facts on record itself in the form of rejoinders sent by them which have not been retracted by the department as the jewellery gifted to them by their son ,was worn on their person visible to the naked eye and were not concealed as has wrongly been assumed by the said authorities.

7. The Government has gone through the case records, submissions of the Applicants and record of personal hearings.

7.1 The Original Adjudicating Authority in his three orders dated 23.11.2015 has recorded the facts of the case under para 8 that all the three Applicants *had arrived from Dubai by Indigo Airlines Flight No. 6E 066 —dated 09.08.2015 and were intercepted by the Officers of the Air Intelligence Unit as the passengers were walking through green channel, on a reasonable suspicion that they might be carrying gold/contraband in their baggage or person. The passengers had declared the value of the dutiable goods as NIL in their Customs Declaration card. During the search of the person of the passenger, the impugned gold weighing 791,793, and 788 gms respectively was recovered from the Applicants.*"

7.2 Thus it is undisputed that the appellants were walking through the green channel when they were intercepted by the officers of the Air Intelligence Unit. They declared the value of the goods carried by them



as "NIL" in Customs Declaration Card, thereby declaring that they had no dutiable items. The gold was discovered only on examination of their person. Dutiable items are required to be mandatorily declared as per section 77 of the Customs Act, 1962.

7.3 The gold jewellery seized was crude gold of 24 carat purity and was meticulously concealed beneath clothes worn by the Applicants. In their statements before the investigating officer, all the three had stated that the gold was handed over to them by third persons for carrying the gold to India for monetary considerations. Further, this gold was to be delivered to someone outside Chennai airport. Thus the Applicants were not the owners of the crude gold jewellery concealed by them.

8. The Applicants have contended that gold is not a prohibited item. In addressing this contention, Government observes, the Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Honble Apex Court in the case of Sheikh Mohd. Omer V/s Collector of Customs, Calcutta and others, reported in 1970 (2) SCC 728 has laid down that the expression 'prohibition' used in section 111 (d) must be considered as a total prohibition. The Hon'ble Court ruled that "..... any goods which are imported or attempted to be imported contrary to any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions." It is thus clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, "prohibited goods". In para 47 of the said case the Hon'ble High Court has observed "Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the



second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....". Thus failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold "prohibited" and therefore liable for confiscation and the Applicants thus liable for penalty.

9. The contentions of the Applicants that the "eligibility" criteria for import of gold, was only to extend concessional rate of duty is not correct. The Applicants, were held ineligible passengers for import of gold as they did not satisfy the conditions prescribed for the import of gold as prescribed " *per Clause 3 of Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, issued under Foreign Trade (Development and Regulation) Act, 1992, read with Customs Notification No. 171/94, dated 30-9-94 (as amended)*, The Applicants, did not fulfill the basic condition of eligibility of staying abroad for a minimum period of six months. Thus they are not eligible passengers for the import of gold as they did not satisfy the conditions. If the Applicants were not intercepted they would have smuggled the gold without payment of Customs duty and without any accountal of the same.

10. The Applicants were well aware that gold is not only a dutiable item and needs to suffer customs duty for its import into India, but gold is also subjected to certain restriction with conditions and eligible agencies / persons can only bring the same into India. The manner of opting for the green channel, and making their way to the exit, clearly indicates that they were planning to escape the payment of customs duty and smuggle the gold into India. The impugned gold was discovered only after the Applicants were intercepted and subjected to a search. The Applicants have pleaded for setting aside the Appellate order and have requested for redemption of the gold. The impugned gold has been absolutely confiscated. Government observes in the present case, the Original adjudicating authority has considered it appropriate to direct absolute confiscation of the goods, which indicates that he did not consider it a fit case for exercise of his discretion to give an option to pay the redemption fine under Section 125 of the Act. The Appellate



authority has also not considered allowing redemption against absolute confiscation of the gold. Considering legal position as discussed in Para 8 above, Government does not find any grounds to differ from the above conclusion of absolute confiscation.

11. The Government therefore does not find any reason to take a different view, and the Appellate order does not merit interference. The question of giving option of re-export does not arise. The revision application is therefore liable to be dismissed.

12. Revision application is accordingly dismissed.

Shrawan
27/01/21
(SHRAWAN KUMAR)

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

17-18-19
ORDER No. /2021-CUS (SZ) /ASRA/

DATED 27-01-2021

To,

1. Smt. S. Jansirani, No. 10, Bazaar Street, Wallajapet, Vellore 632 513.
2. Smt. Deepa Satishkumar, 84/197, Main Road, Bhuvanagiri Post, Cuddalore-608601.
3. Smt. Ekambaram Devi, No. 4 Visier Street, Desur, Thiruvanamalai, Tamilnadu.
4. Shri N. Viswanathan, Advocate, Flat 8A RAMS, Door No. 26, South Mada Street, Shri Nagar Colony, Saidapet, Chennai 600 015.

Copy To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED



अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai