

373/243/B/15-RA

REGISTERED  
SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No.373/243/B/15-RA/476

Date of Issue 14.12.2017

ORDER NO. 17/2017-CUS (SZ) / ASRA / MUMBAI/ DATED 14.12.2017 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. Vibha Patni.

Respondent : Commissioner of Customs (Appeals-I), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C.Cus-I No : 338/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai



ORDER

This revision application has been filed by Smt. Vibha Patni, hereinafter referred to as "the applicant", against order-in-appeal no. C.Cus-1 No. 338/2015 dated 29.06.2015 passed by the Ld. Commissioner of Customs (Appeals-1), Chennai whereby four gold bangles weighing 507 gms and of 24 carat purity worn by the applicant at the time of arrival into India (valued at Rs. 13,28,584/- as per Order-in-Original) had been confiscated and the applicant had been given the option to redeem the same for export on payment of redemption fine of Rs. 4,00,000/-. A personal penalty of Rs. 1,25,000/- had also been imposed on the applicant.

2. The brief facts of the present application are:-

2.1 The Applicant, Smt. Vibha Patni, wife of Pawan Patni and holding an Indian Passport Number F.8825970 dated 20.07.2006 had arrived from Singapore by Air India Flight No AI-343 dated 20.04.2014 and was intercepted while she was walking towards exit and questioned by the Officers of the 'Air Intelligence Unit' whether she was carrying any gold/contraband in her possession. The passenger had replied in negative and moreover, she had declared the value of dutiable items in her possession as 'NIL' in the Customs Declaration card and not declared any gold. As the passenger's reply was not satisfactory she was taken to the AIU room for detailed examination and during the course of the examination four Nos. of gold bangles of 24 carat purity, totally weighing 507 gms and valued at Rs.15,29,112/- worn by her were recovered from her hand covered with kurta full sleeves. She was also having currency of 25 Singapore Dollars and Rs.400/- in her possession. As the passenger had attempted to smuggle the said gold bangles by not declaring the same and by way of concealing beneath her clothes and as the passenger has neither declared nor was in possession of any valid permit and as she was not



*Ans.*

eligible to bring the gold, the same were seized, under a Mahazar for further action under the Customs Act, 1962 read with Sec 3(3) of the Foreign Trade (Development & Regulation) Act, 1992.

2.2 The Joint Commissioner of Customs (Airport), Chennai (adjudicating authority) vide Order in Original No: 576/2014-AIU dated 16.02.2015 ordered for confiscation of four Nos. of gold bracelets totally weighing 507 grams under section 111 (d) and (1) of the Customs Act, 1962 read with Sec 3(3) of the Foreign Trade (Development & Regulation) Act, 1992. However, he gave an option to the applicant, viz. Smt. Vibha Patani to redeem the same for re-export on payment of fine of Rs.5,00,000/- (Rupees Five Lakh) in terms of Section 125 of Customs Act 1962 which is to be exercised by her within a period of 10 days from the date of that order and he imposed a penalty of Rs 1,25,000/- (Rupees One Lakh Twenty Five Thousand) on Smt. Vibha Patni under section 112 (a) of the Customs Act, 1962.

2.3 Being aggrieved, the applicant filed appeal before the Commissioner (Appeals-I) Chennai, who after going through the facts of the case and from the order of the adjudicating authority observed that in this case the passenger was intercepted while she was attempting to pass through the exit without declaring the gold; during the personal search, four gold bangles were found to be worn by her and thus the adjudicating Authority's order confiscating the gold is unassailable. The Commissioner (Appeals-I) also observed that only point of consideration at the Appeal stage was whether further relief is warranted on the appellant. On observing that the adjudicating authority has considered the facts that the appellant has no previous offence registered against her, ownership not disputed and the bangles were worn by her, the Commissioner (Appeals-I) felt that, the quantum of Redemption Fine was disproportionate to the margin of profit and a slight reduction of the same would meet the ends of justice.

Accordingly, the Commissioner (Appeals-I), Chennai vide Order-in-Appeal

*Am*



dated 29.06.2015 reduced the Redemption Fine from Rs. 5,00,000/- to Rs.4,00,000/-(Rupees Four Lakhs) and the personal penalty was upheld as fair and just.

3. Being aggrieved by the impugned order, the applicant has filed this revision application on the following grounds:

- i) that the impugned order is bad in law and contrary to the facts of the case.
- ii) that the impugned order suffers from the grave defect of non-application of mind. The Ld. Commissioner (Appeals) failed to appreciate that the applicant had not requested for re-export of the gold jewellery. She specifically requested that the gold be released to her in her reply as well as during the course of personal hearing.
- iii) that the Ld. Commr (Appeals) failed to appreciate that the gold jewellery being the applicant's ancestral property was always being worn by her on her person. On the day of landing at Chennai International Airport, as usual the applicant was wearing the gold bangles on her person. The customs officials have wrongly stated in the mahazar that they have found 4 nos, of gold bangles worn by her and have recovered from the hand covered with Kurta full sleeves. The applicant was wearing Jeans and top which can be verified from the CC TV footage of that particular day and time.
- iv) that in here defense reply before the adjudicating authority and her appeal before CCE (Appeals), the applicant had requested that the CCTV footage of the day of her arrival be seen to verify her claim that she was wearing jeans and top and not full sleeved kurta as alleged. This was however not done resulting in grave miscarriage of justice.
- v) that the Ld. Commr. (Appeals) has seriously erred in not taking into consideration the applicant's submission that the gold jewellery was her ancestral property and produced documents in support of her claim by

which it was evident that the adjudicating authority was kept informed



*Sum*

about the legal acquisition of the impugned gold. It is not disputed by the department that the passenger is a trader as stated in para 14 of the order passed by the lower adjudicating authority; The passenger is having a respectful profession and is an Income Tax Assessee and capable of possessing high valued gold jewellery. No enquiry/ verification was made to disprove the claim of the applicant in the said show cause notice.

vi) that the Learned Commissioner (Appeals) failed to appreciate that on her departure from Delhi Airport, the Customs officers at Delhi Airport after seeing the ASR markings allowed the applicant to take these bangles abroad without any endorsement. No verification has been done with the Delhi Customs Authorities to check the veracity of the applicant's claim. In the absence of this verification, the applicants claim must be held to be correct.

vii) that the Ld. Commr. (Appeals) failed to appreciate that the applicant never attempted to violate any conditions of Baggage Rules. Being a Indian Lady, she was wearing her family/ traditional jewellery and was allowed clearance by the authorities at Delhi Airport in pursuance of CBEC Circular No. F.No. 495119193-Cus VI dated 06.10.1994 which reads :-

*"para 3: it has therefore been decided that so long as the personal gold jewelry being exported through the mode of baggage constitutes bonafide baggage of the passenger, there should be no value restriction on its export. All field formations under your jurisdiction may be suitably instructed in the matter."*

It is submitted that Revenue's interpretation against the circular should not affect a genuine passenger. The allegation of non declaration under Section 77 is not maintainable as the applicant was wearing the jewellery on her person which is part and parcel of personal effects and no concealment was attempted by the applicant. The applicant relies upon the decision of the Hon'ble Revisionary Authority to G.Q.I. reported in 1992 (62) 666 wherein it



*Am.*

has been held that Baggage - Gold Jewellery brought being of Indian origin/ manufactured in India, re import allowed-Redemption Fine of 10% of value of goods imposable, export certificate not being obtained by importer — Penalty not imposable.

viii) that the Learned Commissioner (Appeals) failed to take into consideration the retraction made by the applicant vide letter dated 30.04.2014 that while departing from India via Delhi International Airport she had carried Indian origin jewellery wearing on her hands. The applicant claimed in her retraction letter that she insisted the Delhi customs officials for an endorsement but she had not been issued any export certificate, which system is not widely practiced at the said airport. This fact is supported by the PIL Writ Petition cited supra and the department also has not refuted the same.

ix) that the Customs Officials at Delhi International Airport allowed the applicant to take the jewellery out of India without issuing any export certificate. This fact ought to have been verified by the Chennai Customs officials. No verification of documents produced by the applicant and report from the Delhi Air Customs for having not issued any export certificate has been brought on record which is in violation of the principles of natural justice. Since the impugned order and order-in-original have been passed in violation of the principles of natural justice, they are not sustainable in the eyes of law.

x) that the Ld. Commr. (Appeals) failed to take into consideration the Public Interest Litigation Petition filed by one Shri Abhinav Kumar before the Hon'ble Delhi High Court in which the Hon'ble Court discussed about the failure of the Delhi Air Customs Officers in issuing an Export Certificate to the outgoing Passengers on the spot. (WP @ No. 3634/2014 dated 22.12.2014). The Ld. Commr. (Appeals) ought to have considered the counter filed by the Addl. Commissioner of Customs, IGI Airpot (para 3 of the Judgment) and discussions of the Hon'ble Court in para 8 and other



*Ans.*

discussions while disposing the petition. It is submitted that the applicant's plea that the Gold Jewellery was taken through IGI Airport at the time of her departure cannot be assailed in terms of the said Delhi High Court's decision.

- xi) that the Ld. Commr. (Appeals) failed to appreciate that the applicant is a bonafide passenger and did not have any previous offence case against her as confirmed in the order passed by the adjudicating authority. The applicant had no intention to conceal the gold for avoiding detection which has also been confirmed vide para 14 of the order-in-original.
- xii) that the Ld. Commr. (Appeals) failed to appreciate the quantum of redemption fine needs to be based on the market value minus duty liability while giving an option for redemption under Section 125 of the Act. However no reasoning has been given for imposing such a heavy redemption fine on the applicant. Without prejudice to the applicant's contention that the said gold is not liable to be confiscated, it is submitted that the redemption fine is excessive.
- xiii) that the Ld. Commr. (Appeals) failed to appreciate that penalty is not imposable on the applicant in the facts and circumstances of the present case. No attempt was being made by the applicant to smuggle gold into the country. The said gold is of Indian origin and was worn by the applicant at the time of her departure from the country but the customs officers at Delhi Airport did not make an the applicant has acted bonafidely and in good faith, penalty is not imposable on the applicant.
- xiv) that the Ld. Commr. (Appeals) failed to appreciate that the said gold bangles cannot be re-exported as they were not imported by the applicant but were taken abroad by her at the time of going abroad.

In view of the aforesaid grounds of appeal, the applicant has prayed to quash the impugned order, to pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the present case.

*Ans.*



4. A personal hearing in this matter was held on 30.11.2017 which was attended by Shri Pawan Patni, attorney holder of the applicant, who reiterated the submissions filed through the instant revision application. He pleaded that Revision Application may please be allowed.

5. Government has carefully gone through the case records of Revision Application, contention of the department in the Order-in-Original, contentions made in the Order-in-Appeal under question and the submissions made by the Applicant in his Revision Application.

6. Government observes that in this case the applicant was intercepted while she was attempting to pass through the exit without declaring the gold. During the personal search, four gold bangles were found to be worn by her. Government also notes that the applicant vide her written submissions dated 30.04.2014 retracted her original statement and claimed that while departing from India she had carried Indian origin gold jewellery wearing on her hands. She had claimed that she insisted for endorsement by Delhi Customs at the time of departure but she was not issued any export certificate. She had also relied upon writ petition (PIL) filed in the Hon'ble Delhi High Court on the non issue of export certificate by Delhi Customs.

7. Here, Government places its reliance on Hon'ble Supreme Court's Judgement reported in 1997 (89) E.L.T. 646 (S.C.) wherein Hon'ble Supreme Court, while rejecting the contention of the petitioners that they had retracted within six days from the confession and therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence, observed that the Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner. In another case, Hon'ble Supreme Court while dismissing the SLP filed by the petitioners in its judgment reported in 1996 (83) E.L.T. 258 (S.C.) observed that "it must be



*Am*



remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act.

10. Moreover, Government observes that the adjudicating authority in its Order in Original has also observed that there are inconsistencies in applicant's original statement recorded at the time of seizure & her written submissions and her arrival from Singapore to Chennai which contradicts her claim of gold jewellery taken by her at the time of departure from Delhi airport and the fact remains that she was not having any export certificate as a proof of taking these bangles with her at the time of departing from India.

11. Government observes that the gold is not prohibited item and can be imported throughout India at a duty of 10% by eligible passengers upto 1 Kg. Government also observes that the lower adjudicating authority in his findings has also observed that the gold bangles were worn by the passenger and were visible by the naked eye but at the same time it is a fact that the same were not declared by the passenger as required under Section 77 of the Customs Act, 1962. Further, the fact that the gold jewelry was worn by the applicant and not brought for third person for monetary consideration nor was there any ingenious concealment of gold by the applicant, the applicant has no previous offence registered against her, and ownership not disputed. The department had also not given their rational findings on the submissions of the Applicant that she had carried the Indian jewelry from India and that the Customs Officials did not issue her the export certificate. It is a fact that the Applicant had not declared the gold worn by her at the red channel, be it under the belief that Indian exported jewelry taken by her is being reimported or any other reason. Therefore, the Government holds that there was contravention of the Customs Act, 1962 warranting confiscation of the gold. But, Government holds that while imposing redemption



*[Handwritten signature]*

fine and penalty the applicant deserves to be treated with a lenient view because it is not a case of concealment of gold, ownership of the gold is not disputed and the Applicant has not been acting as a carrier or short visitor.

12. Taking into consideration the foregoing discussion, Government reduces the redemption fine imposed for re-export in lieu of the confiscation of gold weighing 507 gms, valued at Rs. 15,29,112/- ( Rupees Fifteen lacs twenty nine thousand one hundred and twelve ) from Rs.4,00,000/- (Rupees Four Lakhs) to Rs. 2,00,000/- (Rupees Two Lakhs). Government also reduces the personal penalty imposed on the Applicant from Rs. 1,25,000/- (Rupees One Lakh Twenty Five Thousand) to Rs 50,000/-(Rupees Fifty Thousand). The impugned order stands modified to that extent.

13. Revision application is partly allowed on above terms.

14. So, ordered.

*Ashok Kumar Mehta*  
14.12.2017

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

ORDER No. 17/2017-CUS (SZ) /ASRA/ DATED 14.12.2017

To,

**True Copy Attested**

Smt. Vibha Patni,  
51 B, Rani Ka Bagh,  
Amritsar, Punjab 143 001.

*Sankarsan Munda*  
14/12  
SANKARSAN MUNDA  
Asstt. Commissioner of Custom & C. Ex. (RA)

Copy to:

1. The Chief Commissioner, Customs, Customs House, Rajaji Salai, Chennai
2. The Principal Commissioner of Customs (I), New Customs House, Meenambakkam, Chennai 27
3. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Chennai
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. True Copy.

