

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

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F.No. 373/143/B/15-RA / 4732

Date of Issue 02.09.2021

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ORDER NO. 195/2021-CUS (SZ)/ASRA/MUMBAI DATED 25.09.2021 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.

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Applicant : Smt. Nasreen Begum

Respondent : Commissioner of Customs, Chennai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 13/2014-15 dated 23.12.2014 passed by the Commissioner of Customs & Central Excise(Appeals), Hyderabad.

ORDER

This revision application has been filed by Smt. Nasreen Begum (herein referred to as Applicant) against the Order in Appeal No. 13/2014-15 CUS dated 23.12.2014 passed by the Commissioner of Customs & Central Excise(Appeals), Hyderabad.

2. The Officers of Customs intercepted the Applicant at the Rajiv Gandhi International Airport, Hyderabad on 11.02.2014. When officers informed her that they intended to search her, she handed over three gold chains and eight gold bangles totally valued at Rs. 32,65,420/- ( Rupees Thirty two lakhs Sixty five thousand four hundred and Twenty ) worn by her beneath her clothes. The Original Adjudicating Authority vide its Order-In-Original No. 95/2014-Adjn.CUS(ADC) Batch-D dated 05.07.2013 confiscated the gold jewelry but allowed redemption of the same on payment of redemption fine of Rs. 4,90,000/- ( Rupees Four lakhs Ninety thousand) and imposed penalty of Rs. 1,50,000/- (Rupees One lakh Fifty thousand) on the Applicant under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 1,00,000/-(Rupees One lakh) was also imposed under section 114AA of the Customs Act,1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), the Commissioner (Appeals) vide his order No. 13/2014-15 CUS dated 23.12.2014 rejected the appeal.

4. Aggrieved with the above order the Applicant, has filed this revision application alongwith an application requesting condonation of delay of 26 days as she was diagnosed with dengue, on the following grounds;

4.1 The impugned Order-in-Appeal confirming the sanctioning of the rebate claim as Cenvat Credit has been passed by the Commissioner (Appeals), Hyderabad without fully appreciating the factual and legal position in the proper perspective and the order to that extent deserves to be set aside.

4.2 The Applicant had travelled with her husband and two children for the very first time abroad. She had worn gold jewellery on her person while going from India. However, due to ignorance of law, she did not declare the jewellery that she and her family were wearing on their person.

4.3 While in Bangkok they visited various places and also they were informed that the gold ornaments in Bangkok was of very high quality and he found very good designs in the ornaments. Being an Indian woman, she was attracted to the various new designs displayed in jewellery shop and requested her husband to exchange all their gold ornaments they were wearing on their person and buy new designs of jewellery. Her husband acceded to her request and agreed to exchange. They put a little bit of extra money and brought 3 gold chains and 8 gold bangles. Since they had failed to mention the ornaments which they had carried, the Customs Officials alleged that they had smuggled the gold. It is only due to failure of declaring that at the time of embarking from the Country that landed the Applicant in such a situation.

4.3 The Applicants submits that the Additional Commissioner in paragraph 7 & 8 of the Order-in-Original has also accepted the submissions that it could be genuine mistake.

4.4 The Applicants prays a liberal view may be taken considering the fact that declaration was not made due to the lack of knowledge of the procedures the baggage of goods.

4.5 The show cause notice dated 19.05.2014, has only proposed to confiscate 3 gold chains and 8 gold bangles and imposed penalty under Section 112(a) and 114AA of the Customs Act, 1962. However, the Additional Commissioner, vide Order-in-Original dated 06.06.2014 has ordered that appropriate duty should also be paid in terms of Section 125(2) of Customs Act. It is submitted that even in the body of order, there is no discussion with regard to payment of duty, nor in the proposal made in the show cause notice.

4.6 It is a well settled law that an Order passed cannot go beyond the scope of show cause notice. The adjudicating or appellate authority has

to restrict himself only to the allegations made in the show cause notice for rejecting the refund claim. Therefore the order directing the Applicant to pay appropriate duty is liable to be set aside.

4.7 In view of the above, the impugned Order confirming the demand of customs duty is liable to be set aside and allow the appeal in full with consequential relief. Release the confiscated ornaments, set aside the demand of duty, set aside the redemption fine of Rs.4,90,000/- imposed, Set aside the penalty of Rs.1,50,000/- imposed under Section 112(a) and set aside the penalty of Rs.1,00,000/- imposed under Section 114AA of the Customs Act,1962.

5. Personal hearings in the case were scheduled on 04.03.2021, 12.03.2021, 08.04.2021, 15.04.2021, 02.07.2021 and 16.07.2021. However neither the Applicant nor the respondents attended the hearings, the matter is therefore being decided on merits.

6. The Government has gone through the facts of the case. The Applicant did not declare the gold jewelry as required under section 77 of the Customs Act, 1962. She handed over the gold ornaments when she realized that she would be subjected to a personal search. She is not an eligible passenger to import gold as she had stayed abroad only for 4 days. She pleads that she has exchanged the gold taken from India and exchanged it for new ornaments in Bangkok. In the absence of evidence to support this contention the confiscation of gold jewelry is justified.

7. The Original Adjudication authority has used his discretion and allowed redemption of the gold jewelry. Government, agrees with the observations of the Appellate authority that the redemption fine imposed and penalty imposed is appropriate. The Government therefore is not inclined to interfere in the Appellate order on this aspect. Further, The Applicant disputes the customs duty being demanded for the release of the gold. A plain reading of sub-sections (1) and (2) of Section 125 together makes it clear that liability to pay duty arises under sub-section (2) in addition to the fine under sub-section (1). Under the circumstances the release of the gold jewelry would therefore ensue on payment of Redemption fine, Penalty under section 112 (a) and applicable Customs duty.

8. In addressing the issue of penalty under section 114AA the Hon'ble High Court of Karnataka in the case of Khoday Industries Ltd. Vs UOI reported in 1986(23)ELT 337 (Kar), has held that "*Interpretation of taxing statutes – one of the accepted canons of Interpretation of taxing statutes is that the intention of the amendment be gathered from the objects and reasons which is a part of the amending Bill to the Finance Minister's speech*". In order to understand the objective of introduction of Section 114AA in Customs Act as explained in para 63 of the report of the Standing Committee of Finance (2005-06) of the 14th Lok Sabha which states.....

*"Section 114 provides for penalty for improper exports of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulations could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declaration, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to five times the value of the goods. A new Section 114AA is proposed to be inserted after Section 114A."*

Thus, Penalty under Section 112 is imposable on a person who has made the goods liable for confiscation. But there could be situation where no goods ever cross the border. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962, Section 114AA was incorporated in the Customs Act by the Taxation Laws (Amendment) Act, 2006. Hence, once the penalty is imposed under Section 112(a), then there is no necessity for a separate penalty under section 114AA for the same act.

9. In view of the above Government upholds the order of the Appellate authority in respect of the release of the gold jewelery on redemption fine and penalty imposed under Section 112(a)of the Customs Act, 1962. Government however observes that once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA, the penalty of

Rs. 1,00,000/- ( Rupees One lakhs) imposed under section 114AA of the Customs Act,1962 is set aside.

10. The impugned Order is modified as above. Revision Application is partly allowed on above terms.

  
25/8/21  
( SHRAWAN KUMAR )

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

ORDER No. 195/2021-CUS (SZ) /ASRA/

DATED 25-08.2021

To,

1. Smt. Nasreen Begum, 46, Rahimabad Colony, Infantry Road, Cantonment, Bellary-4, Karnataka.
2. The Commissioner of Customs, Hyderabad Commissionerate - II, GST Bhavan L.B.Stadium, Basheer Bagh, Hyderabad - 500 004.

Copy to:

1. M/s AKB Associates, \$311-312 & 211, Commerce House, Above Hotel Chandrika, 9/1 Cunningham Road, Bangalore, 560052.
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