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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. 373/16/B/16-RA / 4727

Date of Issue 02.09.2021

ORDER NO. 198/2021-CUS (SZ)/ASRA/MUMBAI DATED 25.8.2021 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. Shobha Shanbhu Khira

Respondent : Commissioner of Customs, Meenambakkam, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. CUS-I No. 681/2015 dated 30.10.2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Smt. Shobha Shanbhu Khira (herein after referred to as the Applicant) against the Order in appeal C. CUS-I No. 681/2015 dated 30.10.2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that on 16.04.2015, the Officers of Customs intercepted the applicant, who arrived from Dubai after she had cleared herself through Customs Green Channel. She had declared the dutiable goods carried by her as 'NIL'. The examination of the checked in baggage resulted in recovery of 05 nos. of gold bits, weighing 147gms and valued at Rs. 3,94,254/- (Rupees Three lakhs Ninety four thousand Two hundred and fifty four). In addition the officers also recovered 12 white colour stone studded gold rings, 21 white colour stone studded gold pendants, 21 white colour stone studded gold ear rings and 27 white colour stone studded gold bracelets, the gold was of 16 carat purity, totally weighing 745 gms and valued at Rs. 13,32,060/- (Rupees Thirteen lakhs Thirty two thousand and sixty). The entire gold jewelry was recovered from her checked in baggage.

3. The Original Adjudicating Authority vide Order-In-Original No. 201/2015-16-AIRPORT dated 31.07.2015 ordered absolute confiscation of the impugned gold, and imposed penalty of Rs. 1,25,000/- (Rupees One lakh Twenty five thousand) under section 112 (a) and (b) of the Customs Act, 1962 on the Applicants.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C. CUS-I No. 681/2015 dated 30.10.2015 dated 30.10.2015, rejected the Appeal.

5. Aggrieved with the above order the Applicant has filed this revision application submitting that the Appellate order is not justified & legally not correct on the following grounds of revision application

5.1 NO CONCEALMENT:- It is on record that the gold & gold jewellery was kept in the checked in baggage which is the right place to keep the valuable goods. Therefore there was not question of concealment of gold jewellery & gold in the checked in baggage.

5.2 GOLD IMPORTED IS BONAFIDE:- It is wrongly observed in the order that the gold imported by appellant is not bonafide baggage. Under Section 79 of the Customs Act, 1962 bonafide baggage comes into play only in respect of articles which are allow able under duty free allowance which is not our case. That the gold items were brought by the petitioner for her family use in India. Therefore the allegations in respect of non-bonafide baggage is not correct.

5.3 IMPORT OF GOLD IS NOT PROHIBITED:- It is wrongly observed in the order that the import of gold is prohibited. Gold imported by the appellant is not prohibited and not mentioned in the list of prohibited goods in the import policy. It is clearly established without any doubt that the gold imported by the appellant is not prohibited in nature. That in the cases where it has been held that if the goods are not prohibited in that situation it is obligatory on the part of the customs officer to allow to redeem the goods on payment of some fine in lieu of confiscation in terms of section 125 of the Customs Act, 1962.

5.4 Re-export - Option to re-export can be given even when the goods were not declared for the purposes of Section 77 of Customs Act, 1962 on payment of appropriate fine and penalty - Section 125 of Customs Act, 1962

5.5 As per section 125 (l) of the Customs Act, 1962, it is obligatory on the part of the customs officer to give the owner of goods an option to pay in lieu of confiscation such fine as the said officer thing fit and proper. From the above said decisions it is clearly established without any doubt that the re-export permission or redemption for home consumption may be given by imposing redemption fine under Section 125 of Customs Act, 1962.

5.6 Prayer:- In view of the above it is prayed that petitioner may be allowed to redeem the gold for home consumption /re — export out of India on payment of redemption fine interms of Section 125 of Customs Act, 1962. Personal hearing may kindly be granted before the final decision of this case.

6. Personal hearings in the case was held on 20.08.2021. Shri S. S. Arora, Advocate appeared for the hearing. He reiterated their earlier submissions and submitted that the gold jewelery be allowed on nominal fine and penalty as passenger is not a habitual offender, gold jewelery was not concealed and ownership is not in dispute. Nobody attended the hearing on behalf of the respondents.

7. The Government has gone through the facts of the case, The Applicant was carrying gold of more than half a kilogram, being a dutiable item she should have mandatorily declared the same, instead she cleared herself through the green channel and was intercepted. The applicant declared the value of dutiable goods as "NIL" under section 77 of the Customs Act, 1962, the confiscation of the gold jewelry is therefore justified and the Applicants has rendered herself liable for penal action.

8. Government notes that the impugned gold jewelry was recovered from the checked in baggage of the Applicant, the impugned gold therefore does not appear to be ingeniously concealed in any manner. Further most of the gold jewelry is 16 carat. The ownership of the gold is not disputed. The Applicant had brought the gold for her family use. Moreover the gold is mostly of 16 carats purity. There is no evidence on record to infer that she was a carrier or part of some organized smuggling racket. The case appears to be more of an issue of non-declaration than an clandestine attempt at smuggling. The Original Adjudicating Authority has ordered absolute confiscation of the gold relying on the judgement of the Apex Court in the case of Samynathan Murugesashan v/s Commissioner 2010 (254) ELT A 15 (SC). However in the said case the gold was ingeniously concealed in a TV and the gold under import in the case was 7 to 8 kilograms. Government notes that the facts involved in the present case is different from the impugned case. Therefore the absolute confiscation of the gold by relying on this decision is not sustainable. The quantity of gold is not very

large and not in commercial quantity. Absolute confiscation for non-declaration is therefore very harsh and unjustified. The Government therefore is inclined in allowing the release of the impugned gold jewelry on redemption fine and penalty. The Hon'ble Tribunal in the case of Alfred Menezes V/S Commissioner Of Customs, Mumbai reported in 2011 (236) E.L.T. 587 (Tri - Mumbai) held that "*Redemption fine - Prohibited/restricted goods, confiscation of - Power of adjudicating authority under provisions of Customs Act, 1962 to offer redemption fine in lieu of confiscation of prohibited/restricted goods confiscated - Section 125(1) ibid clearly mandates that it is within the power of adjudicating authority to offer redemption of goods even in respect of prohibited goods - Order of Commissioner not giving any reason for concluding that adjudicating authority's order is wrong, set aside - Section 125 ibid.*" This Order of the Hon'ble Tribunal has been upheld by the Hon'ble Bombay High Court on the issue of granting option of redemption.

9. There are series of judgements where redemption of absolutely confiscated gold/ gold jewellery has been allowed considering nature, form, quantity, manner of carrying, passenger being habitual offender or otherwise, etc. The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has held that under section 125 of the Act, it is mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation. In the case of Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.), The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and had remanded the case back for consideration under section 125(1) of the Customs Act, 1962.

10. Government opines that the option to allow redemption of seized goods is the discretionary power to be exercised under section 125 of the Customs Act, 1962, depending on the facts of each case and after examining the merits. Taking into account the facts on record and the gravity of offence, the order of confiscating the impugned gold jewelry absolutely on account of non declaration, is an order in excess and unjustified. The order of absolute confiscation in order of the Appellate authority is therefore liable to be set aside and the gold jewelry and gold bits is liable to be released on appropriate redemption fine.

11. In view of the above the Government sets aside the absolute confiscation in the order of the Appellate authority. Government allows the gold jewelry totally valued at Rs.17,26,314/- to be redeemed on payment of redemption fine of Rs. 5,25,000/- (Rupees Five lakhs Twenty five thousand). The penalty imposed is appropriate.

12. Revision Application is disposed of on above terms.

Shrawan
25/8/21

(SHRAWAN KUMAR)

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

ORDER No. 198/2021-CUS (WZ) /ASRA/

DATED 25.08.2021

To,

1. Smt. Shobha Shanbhu Khira, 3B/11, Manali Building, Evershine Nagar, Malad West, Mumbai 400 064.
2. The Commissioner of Customs, Anna International Airport, Chennai.

Copy to:

3. Shri S. S. Arora, Advocate, 12/334, New MIG Colony, Bandra (E) , Mumbai - 51.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.