

371/82/B/14-RA

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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.371/82/B/14-RA

Date of Issue 22.12.2017

ORDER NO. 21 /2017-CUS (SZ) / ASRA / MUMBAI/ DATED 22.12.2017 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. Sithy Fahiza Mohamed Cassim.
Respondent : Commissioner of Customs (Appeals), Mumbai-III.
Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-Custm-PAX-356 & 357/14-15 dated 28.08.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.





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ORDER

This revision application has been filed by Smt. Sithy Fahiza Mohamed Cassim., hereinafter referred to as the "Applicant", against order-in-appeal no. MUM-Custm-PAX-356 & 357/14-15 dated 28.08.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are as follows; The Applicant, holding Sri Lankan Passport No. N0616315 arrived on 03-04-2014 at C.S. I. Airport, Mumbai from Colombo Flight No. UL 141. The Applicant opted for green Channel Customs clearance, but was diverted for examination. She was found to be wearing gold jewelry i.e. one gold chain weighing 267grams and two gold rings weighing 21 grams, all cumulatively valued at Rs.7,48,706/-. As the Applicant was not eligible for gold import and as she did not declare the gold at the time of arrival, the gold chain and the gold rings were seized and the matter was taken up for adjudication.

3. The Case was adjudicated by the Joint Commissioner of Customs, International Airport, Mumbai who ordered the confiscation of the goods, totally valued at Rs.7,48,706/-, but with an option to the Applicant to redeem the same on payment of a fine of Rs.2,60,000/- in lieu of confiscation. The Commissioner of Customs also imposed a Personal Penalty Rs. 70,000/- under Section 112 (a) & (b) of the Customs Act, 1962 and a penalty of Rs. 5,000/- on the Applicant under Section 114 AA of the Customs Act, 1962. Being dis-satisfied with the order the Applicant filed an Appeal before the Ld. Commissioner of Customs (Appeals Zone III) who vide his Order-in-Appeal dated 1/9/2014 rejected the Appeal.

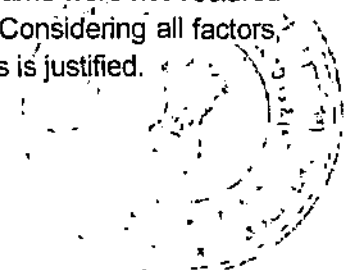
4. Being aggrieved and dis-satisfied with the above Order in Appeal, the Applicant has filed this Revision Application on the following grounds.

- i. The Applicant is a Foreign National.
- ii. The Gold jewelry was found to be on her person.
- iii. The said Gold items were not concealed in any manner.
- iv. It is the first time that the Applicant has brought the said type of goods.
- v. Applicant was not aware of the Indian Custom rules.
- vi. The goods, brought in by the Applicant were not for sale.
- vii. The said goods brought in by Applicant are for personal & bonafide use.
- viii. The said goods may kindly be allowed for re-export, as in similar type of cases Re-export has been granted by the concerned authorities.

5. A personal hearing was granted to the Applicant on 04.12.2017, which was attended by the Advocate, Shri A. M. Sachwani. The advocate requested for an adjournment which was acceded to and the personal hearing was rescheduled on 13.12.2017. The Advocate, Shri A. M. Sachwani, appeared for the Applicant and re-iterated the submissions filed in the grounds of Appeal and pleaded to allow the Revision Application by taking a lenient view.

6. I have 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, He must face the consequences. It is a fact that the same were not declared by the passenger as required under Section 77 of the Customs Act, 1962. Considering all factors, The Government is of the opinion that the confiscation of the impugned goods is justified.

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7. However, the lower adjudicating authority in his findings has also observed that the gold chain was worn by the passenger and were not concealed in any manner. The gold chain and gold rings also appears to be personal jewelry and not for sale or brought for third person for monetary consideration. The Applicant also does not appear to be acting as a carrier or short visitor. This was her first visit to India, and ownership of the gold jewelry not disputed. In view of the above , the Government holds that while imposing redemption fine and penalty the applicant deserves to be treated with a lenient view.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold in lieu of fine. The redemption fine imposed in lieu of the confiscation of gold totally weighing 267 gms and two gold rings weighing 21 grams, all cumulatively valued at Rs.7,48,706/- (Rupees Seven lacs, forty eight thousand seven hundred and six) from Rs. 2,60,000/- (Rupees Two Lakhs, sixty thousand) to Rs. 2,00,000/- (Rupees Two Lakhs). Duty at normal rates applicable for baggage and other charges, if any shall be paid under section 125(2) of the Customs Act, 1962, as ordered by the original adjudicating authority. Government also reduces the personal penalty imposed on the Applicant under section 112(a) and (b) of the Customs Act, 1962 from Rs. 70,000/- (Rupees seventy thousand) to Rs 50,000/-(Rupees Fifty Thousand). The penalty of Rs. 5,000/- (Rupees Five thousand) on the Applicant under Section 114 AA of the Customs Act, 1962 is reduced to Rs. 2000/- (Rupees Two thousand). The impugned order stands modified to that extent.

9. Revision application is partly allowed on above terms.

10. So, ordered.

Ashok Kumar Mehta
22.12.17

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

ORDER No. 21 /2017-CUS (SZ) /ASRA/ MUMBAI.

DATED 22-12-2017

To,

Smt. Sithy Fahiza Mohamed Cassim.
C/o Shri N. J. Heera, Advocate,
Nulwala Building, 41, Mint Road,
Fort, Mumbai - 400 001.

True Copy Attested

Sankarsan Munda
22/12/17
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex. (RA)

Copy to:

1. The Chief Commissioner, Customs, New Customs House, Mumbai.
2. The Commissioner of Customs, C.S.I. Airport, Mumbai.
3. The Commissioner of Customs (Appeals), Mumbai - III.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

