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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. 373/06/B/14-RA / 183

Date of Issue 01/05/2018

ORDER NO. 220/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.04.2018 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 : Shri Deepthi Bandulakaldera

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 1635/2013 dated 26.11.2013 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Deepthi Bandula Kaldera against the order no C.Cus No. 1635/2013 dated 26.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.

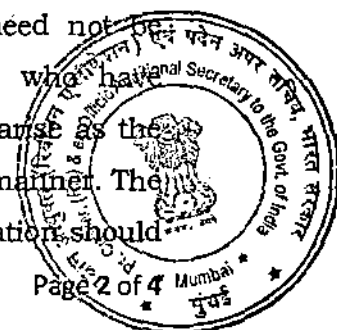
2. Briefly stated facts of the case are that the applicant, a Sri Lankan National had arrived at the Chennai Airport on 03.04.2013. Examination of his person resulted in recovery of one gold ring and one gold bangle (unfinished jewelry) worn by him, totally weighing 72.2 gms valued at 2,04,717/- (Two lacs Four thousand Seven hundred and Seventeen). As the Applicant had not declared the impugned gold the original Adjudicating Authority vide his order 347/ Batch A dated 03.04.2013 confiscated the gold jewelry, but allowed re-shipment of the goods on payment of a redemption fine of Rs. 1,05,000/-. A Penalty of Rs. 21,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No. 1635/2013 dated 26.11.2013 rejected the Appeal.

4. The applicant has filed this Revision Application interalia on the grounds that,

4.2 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; the seized gold chain is used and old; As per the Original adjudicating authority the Applicant did not admittedly pass through the green channel, He was at the red channel all along at the arrival hall of Airport; that being a foreign national he was not aware of the law; the gold jewelry was worn by the Applicant and it is his personal belongings and was not for commercial trade; that as the jewelry was worn by the Applicant and the same was visible and he showed it to the officer therefore the question of declaration does not arise; that the worn gold jewelry was old and it should have been allowed for re-export without redemption fine and penalty, But the officers proceeded to detain the jewelry because it was not declared;

4.2 The Applicant further pleaded that as per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 states that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared; that the question of eligibility does not arise as the Applicant is a foreigner; the gold was not concealed in an ingenious manner. The CBEC circular 9/2001 gives specific directions stating that a declaration should



not be left blank, if not filled in the Officer should help the passenger to fill in the declaration card; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for redemption under section 125 of the Customs Act, 1962 and prayed for reduction of redemption fine and reduced personal penalty for re-export.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar attended the hearing he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where re-export of gold was allowed on reduced redemption fine and penalty. Nobody from the department attended the personal hearing.

6. The Government has 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. The Applicant is a frequent traveller and well aware of the rules. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant was not intercepted while trying to exit the Green Channel. The gold jewelry was worn by the Applicant, hence, there was no concealment of the goods. The ownership of the gold is not disputed. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant more so because he is a foreigner. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts the Government is of the opinion that a lenient view can be taken in the matter. The impugned Order in Appeal therefore needs to be modified with slight reduction in the redemption fine and penalty for re-export.



8. Taking into consideration the foregoing discussion, the redemption fine in lieu of confiscation of the gold totally weighing 72.2 gms valued at 2,04,717/- (Two lacs Four thousand Seven hundred and Seventeen) for re-export is reduced from Rs. 1,05,000/- (Rupees One Lac Five thousand) to Rs. 75,000/- (Rupees Seventy Five thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 21,000/- (Rupees Twenty one thousand) to Rs. 15,000/- (Rupees Fifteen thousand) under section 112(a) of the Customs Act, 1962.

9. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms

10. So, ordered.

Ashok Kumar Mehta
27.4.18

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

ORDER No. ~~290~~ 290/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.04.2018.

To,

Shri Deepthi Bandulakaldera

C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

Sankarsan Munda
1/5/18

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
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