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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/131/B/16-RA/235

Date of Issue 03/05/2018

ORDER NO. 236/2018-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 : Smt. Kokila Rangaswamy

Respondent : Commissioner of Customs (Airport), Bengaluru.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 400/2016 dated 08.06.2016 passed by the Commissioner of Customs (Appeals) Bengaluru.



ORDER

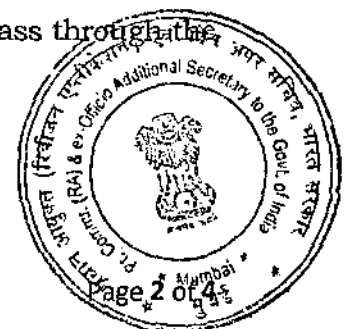
This revision application has been filed by Smt. Kokila Rangaswamy against the Order in Appeal no . 400/2016 dated 08.06.2016 passed by the Commissioner of Customs Excise (Appeals) Bengaluru..

2. Briefly stated facts of the case are that the applicant arrived from Bangkok on 22.07.2014. She was intercepted as she was walking out through the Green Channel, he did not declare any dutiable items in his declaration slip. A personal search resulted in the recovery of gold jewelry totally weighing 349.55 gms valued at Rs. 9,87,479/- (Rupees Nine Lacs Eighty Seven thousand Four hundred and Seventy nine) kept concealed in a red pouch in her blouse. After due process of the law the Original Adjudicating Authority, vide his order 562/2015-16 dated 30.01.2016 absolutely confiscated the gold bars referred to above under section 111(d) and 111(l) of the Customs Act, 1962. A Penalty of Rs. 3,00,000/- under Section 112 (a) and Rs. 1,50,000/- under section 114AA of the Customs Act, 1962 was also imposed on the Applicant.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals). The Commissioner of Customs (Appeals-I) Bengaluru., vide his Order in Appeal . 400/2016 dated 08.06.2016 rejected the Appeal.

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

4.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The seized gold is old and the Applicant has been wearing the same for several months; The Adjudication Authority has simply glossed over the judgments and points raised in the Appeal grounds; The Applicant was wearing the gold jewelry but it was recorded as if she was recovered from her blouse; There is no ingenious concealment of the gold; No false declaration was made by the Applicant therefore section 114AA cannot be invoked; Since she was wearing the gold jewelry the baggage rules are not attracted; She was all along the under the control of the customs officers at the Red Channel and did not pass through the Green channel, the CCTV record video will prove the same ;



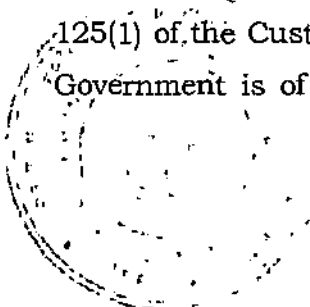
4.2 It has also been pleaded that even assuming without admitting that the Applicant did not declare the gold the duty @ 36.05% , Rs. 3,70,000/- however the duty under section 112 and 114AA is much higher and unreasonable; There are a numerous judgements that option under Section 125 of the Customs Act, 1962 has to be exercised, it is mandatory to give option to the person found guilty to pay in lieu of confiscation. Further there are no provision for absolute confiscation of the goods;

4.3 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

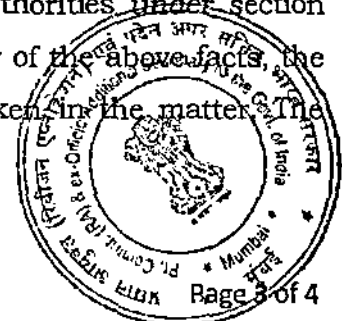
5. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. It is a fact that the gold jewelry was not declared by the Applicant as required under Section 77 of the Customs Act, 1962. If she was not intercepted she would have walked away without paying customs duty. Thus, under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant was intercepted before she exited the Green Channel. The gold jewelry is claimed by the Applicant and there is no other claimant. The gold jewelry was not ingeniously concealed. There are no previous offences registered against the Applicant. 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



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impugned Order in Appeal therefore needs to be modified and the impugned gold jewelry is liable to be released for re-export on redemption fine and penalty.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold jewelry for re-export in lieu of fine. The gold jewelry weighing 349.55 gms valued at Rs. 9,87,479/- (Rupees Nine Lacs Eighty Seven thousand Four hundred and Seventy nine) is ordered to be redeemed for re-export on payment of redemption fine of Rs 4,00,000/- (Rupees Four lacs) 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.3,00,000/- (Rupees Three lacs) to Rs.2,00,000/- (Rupees Two lacs) under section 112(a) of the Customs Act,1962. The penalty of Rs. 1,50,000/- (Rupees One lac Fifty thousand) imposed under section 114AA is also reduced to Rs. 50,000/- (Rupees Fifty thousand).

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. 236/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 27.04.2018

To,

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

True Copy Attested

Sankar San Munda
27/4/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. Commissioner of Customs (Airport) Bengaluru.
2. Commissioner of Customs (Appeals) Bengaluru.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

