

371/28/B/2014-RA
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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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F.No.371/28/B/14-RA/815

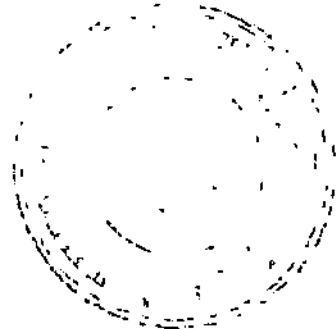
Date of Issue 18.01.2018

ORDER NO. 25/2017-CUS (WZ) / ASRA / MUMBAI/ DATED 29.12.2017 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. Usha Sagar Naresh.

Respondent : Commissioner of Customs (Appeals-I), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-533 & 534/13-14 dated 20.01.2014 passed by the Commissioner of Customs (Appeals), Zone - III.



ORDER

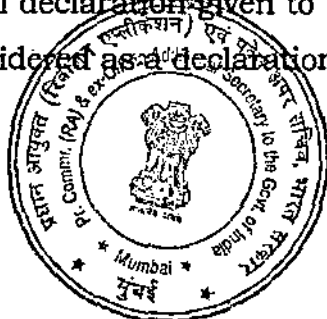
This revision application has been filed by Smt. Usha Sagar Naresh, hereinafter referred to as "the Applicant", against order-in-appeal no. MUM-CUSTOM-PAX-APP-533 & 534/13-14 dated 20.01.2014 passed by the Commissioner of Customs (Appeals), Zone - III.

2. Brief facts of the case are as under:

The Applicant, Smt Sagar Usha Naresh, had arrived by flight No.GF-62 from Dubai on 11.03.2012 and after having passed through the green channel was intercepted and diverted to the 'Red Channel'. Detailed examination of her baggage resulted in the recovery of three gold chain and a gold ring weighing 43.07 gms totally valued at Rs.1,09,965/-. The gold jewelry was detained vide detention memo, as the Applicant opted for green channel inspite of having goods in her baggage beyond admissible free allowance. The Applicant waived the issue of formal SCN. During the personal hearing the Applicant stated that she was not aware of the provisions of Baggage Rules, 1998, and therefore failed to declare the said jewelry. The case was spot adjudicated by the Assistant Commissioner of Customs, the impugned goods were confiscated under section 111(d) of the Customs Act, 1962 with an option to redeem the goods on payment of redemption fine of Rs.22,000/- , Penalty of Rs. 11,000/-. Customs duty as applicable was also imposed on the appellant.

3. Aggrieved by the said order, the applicant had filed an appeal before the Commissioner of Customs (Appeals). The Commissioner of Customs (Appeals) rejected the Appeal. Being aggrieved by the Order-in-Appeal the Applicant has filed the present Revision Application on the following grounds;

- The impugned order in Appeal is bad in Law, unjust and has been passed without application of mind.
- The Appellant had not cleared the Green Channel and was intercepted prior to that by the officer of Customs.
- The oral declaration given to the Customs officer at the Red channel has to be considered as a declaration as provided u/s 77 of the Customs Act.



- The said jewellery was not concealed and therefore there was no question of evading detection by Customs in any manner whatsoever. Hence no mensrea.
- The appellant submits that at the time departure from India she had worn the same and brought back as it belongs to her. The appellant submits that the gold jewellery is of Indian origin and not of foreign origin.
- The adjudicating authority while adjudicating the case has referred to only one passenger. It is pertinent to note that there were three chains and one 18 carat ring
- The Appellant submits that as per the adjudication order and records of personal hearing there is no allegation that the gold was concealed.
- The Adjudication order and the Appeal order are silent on the point of penalty clause i.e. whether the penalty has been imposed u/s. 112 (a) or (b).
- All the three passengers arrived together and all the three gold chains were on their person and one ring was on the hand of the appellant.
- The entire gold jewellery has no foreign marking to show that they are foreign made.
- The adjudicating authority while passing the order has not referred to any invoice or any document which has been said by the appellate authority. The Appellant submits that in Appeal stage, the Appellate Authority on its own cannot refer to any document which has not been said in the adjudication order.
- It was the contention of the Appellant and co-passengers that being Indian national, they had worn these jewellerys when they had left India and these were their personal jewellerys which they had worn and brought it back at the time of arrival. The Appellant submits that they had no foreign currencies alongwith them when they had left India to buy such amount of jewelry.



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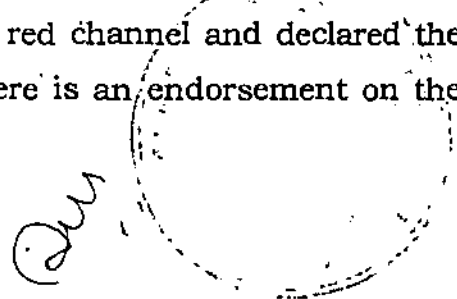
In view of the above the Applicant prayed that the Order in Appeal No. MUM-CUSTOM-PAX-APP-533 & 534/13-14 dated 20.01.2014 be set aside, the goods be allowed to be shipped out of India without payment of duty, confiscation of the goods, Fine and penalty be set aside.

4. 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 setting aside the Order in Appeal.

5. Government has carefully gone through the case records of the Revision Application, contention of the department in the Order-in-Original, contentions made in the Order-in-Appeal under question and the submissions made by the Applicant in his Revision Application.

6. Government observes that in this case the Applicant had stayed abroad for six days. During the search, three gold chains and one gold ring was said to be found in her baggage. Import of gold in baggage is allowed under specific conditions as per the Notification No. 31/2003-Cus., dated 01.03.2003 (as amended) subject to certain conditions. Vide the said Notification, a passenger holding a valid passport, who is coming to India after a period, less than six months of stay abroad was not entitled to import any gold. The Appellant also submits none of the other three Passengers travelling alongwith with her took any free allowance from the customs department at the time of arrival. However free allowance cannot be pooled alongwith other passengers, neither have the other passengers made a claim for the gold.

7. The Applicant was intercepted while she was attempting to pass through the Green Channel exit without declaring the gold. The Applicant avers that she never went to the green channel but went to the red channel and declared the gold jewelry. The appellant also submits that there is an endorsement on the



detention receipt, that the goods are detained for duty and /Fine /P.P. There is no averment on the detention receipt stating that the appellant has not declared the goods. However, if the Applicant intended to declare the gold a declaration as required under Section 77 of the Customs Act, 1962, is required to be filled in and submitted, that there is no mention of the declaration form is enough to conclude that the Applicant intended to walk away through the Green Channel.

8. Moreover, Government observes that there are inconsistencies in facts of the case as made out by the Applicant. The applicant has claimed that the impugned gold jewellery was the same as that taken by her while going abroad and the impugned jewelry is of Indian origin. However, she has not produced any evidence to support this contention. Further, the Commissioner (Appeals) refers to a letter received from the department, contesting these claims. Wherein in their counter arguments, have stated that three invoices bearing POS NO. HO 45,241, POS NO HO 45.240 issued by Yaseen Jewellery L.L.C. Dubai on 10.03.2012 and PS 00.90 dt 10.03.2012 issued by VIRAL Jewellers L.L.C. Dubai, produced by the appellant herself proves that the impugned goods were new and were purchased a day prior to her arrival. These invoices produced by the appellant herself sufficiently prove the goods to be of foreign origin and purchased in Dubai during her visit. It therefore concludes that the Applicant has not been truthful in her depositions and does not deserve leniency in these proceedings.

9. Thus, there is no doubt that the applicant has contravened the provisions of Customs Act, 1962. The misdeclaration to the Customs authorities, the ineligibility of the Applicant to import the gold, justifies confiscation of the gold under section 111(d), (l) and (m), of the Customs Act, 1962. The lower authority has also, considering the circumstances given the option for redemption under section 125 on imposition of fine and penalty. The Government is of the opinion that there is no merit in the Revision Application. The Revision Application is liable for rejection.



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10. The Government finds no reason to interfere with the Order-in-Appeal. The Appellate order No MUM-CUSTM-PAX-APP-533 & 534/13-14 dated 20.01.2014 passed by the Commissioner of Customs (Appeals), Zone - III is upheld.

11. Revision application is dismissed.

12. So, ordered.

Ashok Kumar Mehta
29.12.17

(ASHOK KUMAR MEHTA)

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

ORDER No. 25/2017-CUS (WZ) /ASRA/MUMBAI DATED 29.12.2017

To,

True Copy Attested

Smt. Usha Sagar Naresh,
27/205, Sindhu Building,
Sion, Mumbai 400 022.

Sankarsan Munda
29/12/17

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex. (WZ)

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), Zone-III, Mumbai
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

