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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. 373/289/B/14-RA/30

Date of Issue 08/05/2018

ORDER NO. 264/2018-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. Fathima Fiyaza

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. 1165/2014 dated 03.07.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Smt. Fathima Fiyaza against the order no C.Cus No. 1165/2014 dated 03.07.2014 passed by the Commissioner of Customs (Appeals), Chennai.

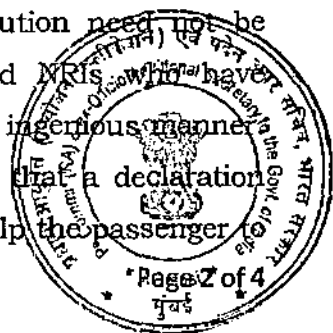
2. Briefly stated facts of the case are that the applicant, a Sri Lankan National had arrived at the Chennai Airport on 01.02.2014. Examination of her person resulted in recovery of one gold chain and gold bangles totally weighing 155 gms valued at 3,92,390/- (Three lacs Ninety two thousand Three hundred and Ninety). As the Applicant had not declared the impugned gold the original Adjudicating Authority vide his order 105/2014 Batch C dated 01.02.2014 absolutely confiscated the gold jewelry, and a Penalty of Rs. 40,000/- 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. 1165/2014 dated 03.07.2014 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 jewelry are used and old; As per the Original adjudicating authority the Applicant did not admittedly pass through the green channel, She was at the red channel under the control of the officers and being a foreign national she was not aware of the law; the gold jewelry was worn by the Applicant and it was not concealed; 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; Assuming without admitting that she did not declare the gold it is only a technical fault.

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; 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



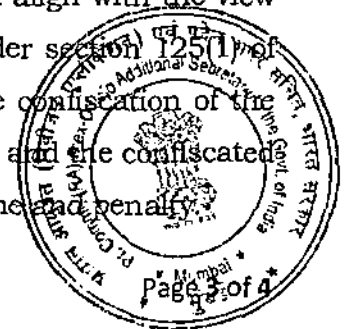
fill in the declaration card; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions.

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. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had she not been intercepted she 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. 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 she 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. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.



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8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold jewelry weighing 155 gms valued at 3,92,390/- (Three lacs Ninety two thousand Three hundred and Ninety) is ordered to be redeemed for re-export on payment of redemption fine of Rs 1,50,000/- (Rupees One lac Fifty 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. 40,000/- (Rupees Forty thousand) to Rs. 30,000/- (Rupees Thirty 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.

(Signature)
27.4.18
(ASHOK KUMAR MEHTA)

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

ORDER No. 264/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.04.2018

True Copy Attested

To,

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

(Signature)
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.
5. Spare Copy.

