

373/144/B/14-RA

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सत्यमेव जयते

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F.No. 373/144/B/14-RA/

Date of Issue 07.02.2018

ORDER NO. 29/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.01.2018  
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. Navene Elangovan.

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal  
No. C. Cus No. 470/2014 dated 17.03.2014 passed  
by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Navene Elangovan (herein referred to as Applicant) against the order C. Cus No. 470/2014 dated 17.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, a Singapore national, arrived at the Chennai Airport on 08.06.2013. Examination of his baggage resulted in the recovery of gold jewelry weighing 178 gms totally valued at Rs. 4,64,576/-. After due process of the law, the Assistant Commissioner of Customs, Airport vide Order-In-Original No. 666/ Batch D dated 08.06.2013 ordered absolute confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 47,000/- under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 470/2014 dated 17.03.2014 rejected the appeal of the applicant.

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

4.1. they were of Indian origin settled in Singapore and she had come to India on a pilgrimage to visit temples in India along with her Mother and Grandmother. It was their first visit to India.

4.2 there are no allegations that the Applicant was trying to exit the Green Channel. The gold chains were worn by her, her mother and Grandmother and were not concealed in any manner.

4.3 she had declared orally that she was wearing gold and the same was used and was not brought for commercial trade. Even assuming without admitting she had not declared the gold before the officers it is a technical fault and is pardonable. Secondly, CBEC Circular 09/2001 gives specific directions to the Customs officer that the declaration



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should not be blank, if not filled in by the passenger the officer will help them to fill the declaration card.

4.2. she did not admittedly pass through the green channel and was at the red channel all along under the control of Customs officers.

4.3 Being a foreign National she was not aware of the law, and also therefore eligibility notification no. 03/2012 dated 16.01.2012 for import of gold on concessional rate does not apply to her.

4.4 sections 111 (d) (l) (m) and (o) are not attracted as no offence was committed. Moreover the personal penalty imposed was very high and unreasonable.

The Revision Applicant has cited various assorted judgments in support of her case, and prayed for permission to re-export the gold chains on nominal redemption fine and reduction of personal penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, reiterated the submissions filed 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. The Applicant is a foreign national and had come on a pilgrimage to India. 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 gold was not declared by the passenger as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. However, the Applicant is a foreigner, and the eligibility notification to import gold is not applicable to her. The goods were not in commercial quantity and from the facts of the case it appears that the Applicant was wearing the gold when she was intercepted and it was not indigenously



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concealed. The facts of the case also state that the Applicant had not cleared the Green Channel exit. With regards to the declaration the CBEC Circular 09/2001 gives specific directions to the Customs officer as follows, "It may be ensured that every passenger reporting at Red Channel fill up a Disembarkation Card clearly mentioning therein the quantity and value of goods that he has brought, and hand over the Customs portion of the card to the officer on duty at the red Channel. In case the same is incomplete/not filled up, the proper Customs officer should help record the O.D of the passenger 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. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned gold is harsh and not justified.

8. As the applicant has requested for export of the confiscated gold for re-export, Government is inclined to accept the request. In view of the above mentioned observations, the Government also finds that a lenient view can be taken while imposing redemption fine and penalty upon the applicant. 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 impugned Order in Appeal therefore needs to be modified and the absolute confiscation in respect of the impugned gold needs to be modified and the confiscated gold chains are liable to be allowed for re-export on payment of redemption fine.

9. Taking into consideration the foregoing discussion, Government modifies the order of absolute confiscation of the impugned gold. Government allows redemption of the confiscated gold for re-export in lieu of fine. The confiscation of the gold totally weighing 178 gms, valued at Rs. 4,64,576/- (Rupees Four lacs, sixty four thousand five hundred and seventy six) is ordered to be redeemed on redemption fine of Rs. 90,000/- (Rupees. Ninety thousand ) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed.



QW

The penalty imposed on the Applicant is therefore reduced from Rs.47,000/- (Rupees Forty seven thousand) to Rs. 35,000/- (Rupees Thirty five thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal 470/2014 dated 17.03.2014 is modified as detailed above.

11. So, ordered.

*(Signature)*

21.1.18

(ASHOK KUMAR MEHTA)

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

ORDER No. 29 /2018-CUS (SZ) /ASRA/Mumbai

DATED

31.01.2018

**True Copy Attested**

To,

Smt. Navene Elangovan.  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> 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.

