



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/230 /B/14-RA /1108

Date of Issue 08.02.2018

ORDER NO. 30/2018-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. Mohammad Marzook Zuriya Mumtaz

**Respondent** : Commissioner of Customs, Chennai.

**Subject** : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 664/2014 dated 10.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri. Mohammad Marzook Zuriya Mumtaz (herein referred to as Applicant) against the order no 664/2014 dated 10.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are as follows, the applicant, a Sri Lankan national, arrived at the Chennai Airport on 01.11.2012. On arrival the Applicant was intercepted at the Green Channel while attempting to exit, and search of her person resulted in the recovery of two gold bits weighing 478.5 gms valued at Rs. 14,87,895/-, 235 gms of gold articles valued at Rs. 6,83,145/- . The two gold bits were concealed in the pleated hair and covered with a head scarf. After due process of the law the Original Adjudicating Authority vide Order-In-Original No. 824 dated 03.12.2013 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. 2,20,000/- under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) praying for reduction of redemption fine and penalty. The Commissioner (Appeals) vide Order-In-Appeal No. C.Cus No. 664/2014 dated 17.04.2014 rejected the appeal of the applicant.

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

4.1. The order of the respondent is against law, weight of evidence and circumstances of the case.

4.2 the seized gold jewelry belongs to her family and she was wearing it for several months she had brought gold bits for re-making it into gold ornaments for her sisters marriage and medical expenses and not for monetary consideration.

4.3. when asked she showed the gold worn to the Customs officer, having seen the gold jewelry the question of declaration does not arise. Secondly, the worn gold jewelry was visible to the naked eye and therefore there is no question of declaration. Further being a foreign national she was not aware of the law.



she was not aware that it was an offence to bring in gold jewelry and requested to be pardoned.

4.4 when asked she showed the gold bangles to the Customs officer, having seen the gold jewelry the question of declaration does not arise. Secondly, the worn bangle was visible to the naked eye and therefore the question of declaration does not arise. Further being a foreign national she was not aware of the law.

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

4.6 she did not pass through the green channel and was at the Red Channel all along under the control of the Customs Officers.

4.7 being a foreign citizen the eligibility notification 03/2012 dated 16.01.2012 for import of gold on concessional rate does not apply to her.

The Revision Applicant has cited various assorted judgments in support of her Commissioner (Appeals) case, and prayed for allowing re-export without redemption fine and penalty or reduction of the 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, re-iterated 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 facts of the case revealed that along with the gold jewelry she was wearing, The Applicant had also concealed gold bits in her hair. The Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is intercepted circumventing the law, the law of the land must take its course. The gold chain was not declared by the passenger



*[Handwritten signature]*

redeemed for re-export on payment of redemption fine of Rs.5,00,000/- (Rupees Five lacs) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 2,20,000/- (Rupees Two lacs twenty thousand ) to Rs. 1,50,000/- (Rupees One lac fifty thousand ) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal 664/2014 dated 10.04.2013 is modified as detailed above. Revision Application is partly allowed.

10. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No.30/2018-CUS (SZ) /ASRA/Mumbai

DATED 31.01.2018

To,

Shri. Mohammad Marzook Zuriya Mumtaz,  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

True Copy Attested



SANKARSAN MUNDA

Asstt. Commissioner of Customs & 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.



as required under Section 77 of the Customs Act, 1962 and if she was not intercepted she would have taken out the gold bangles without payment of customs duty. Hence the confiscation of the gold is justified.

7. However, the Applicant being a foreigner, the eligibility notification to import gold on concessional rate 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 jewelry and the gold bits were brought in to make jewelry for marriage. 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 instructions stating that, when the Disembarkation Card is not filled in by the passenger, the Customs Officer must ensure that, the oral declaration given by the passenger is recorded on the disembarkation card. 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 cannot be justified. 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. The order absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified, the confiscated gold is liable to be allowed for re-export on payment of redemption fine.

8. 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 713.5 gms valued at Rs. 21,71,050/- (Rupees Twenty One lacs seventy one thousand and fifty) is ordered to be

confiscated gold chain is liable to be allowed for re-export on payment of redemption fine.



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