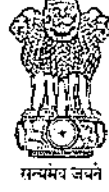


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. **371/154/B/WZ/2018-RA** / 6285 : Date of Issue : 03/11/2022

ORDER NO. 315 /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 31.10.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

(i). F.No. **371/154/B/WZ/2018-RA**

Applicant : Smt. Mahamooddu Lebbe Samsiya

Respondent : Pr. Commissioner of Customs, CSMI Airport, Mumbai

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal
No. MUM-CUSTM-PAX-APP-976/2017-18 dated 31.01.2018)
issued through S/49-05/2015/AP(Dept) passed by the
Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Smt. Mahamooddu Lebbe Samsiya (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-976/2017-18 dated 31.01.2018) issued through S/49-05/2015/AP(Dept) passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that the applicant who is a Sri Lankan national was intercepted on 16.08.2013 by Customs Officers at CSMI Airport, Mumbai, having earlier arrived from Colombo onboard Sri Lankan Airlines Flight no. UL141 / 16.08.2013. The applicant had cleared herself through the green channel and had not declared the dutiable goods in her possession. The applicant had not declared the value of the dutiable goods in the Customs gate pass / declaration. The personal search of the applicant resulted in the recovery of ten gold bangles worn by her on both her hands and one gold chain worn on her neck, totally weighing 586.90 grams, valued at Rs. 15,69,418/-.

3. The Original Adjudicating Authority (OAA), viz, Joint Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. JC/RR/ADJN/133/2014-15 dated 30.09.2014 issued on 10.10.2014 through F.No. SD/INT/AIU/92/2013-AP-'B' [S/14-5-87/2013-14-Adjn ordered for the confiscation of the impugned gold jewellery weighing 586.90 grams, valued at Rs. 15,69,418/-) under Section 111(d), (l) and (m) of the Customs Act, 1962. However, the applicant was given an option to redeem the goods on payment of a fine of Rs. 4,50,000/- under Section 125(1) of the Customs Act, 1962 and duty as applicable and other charges to be paid under Section 125(2) of the

Customs Act, 1962. Also, a personal penalty of Rs. 2,25,000/- under Section 112 (a) and (b) of the Customs Act, 1962 was also imposed.

4. Aggrieved by the said order, the respondent preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-976/2017-18 dated 31.01.2018) issued through S/49-05/2015/AP(Dept) set aside the OIO passed by the OAA and ordered for the absolute confiscation of the impugned gold. However, the penalty imposed under Section 112(a) and (b) of the Customs Act, 1962 by the OAA was upheld.

5. Aggrieved with the above order of the appellate authority, the Applicant has filed this revision application on the following grounds;

5.01. that the applicant was a foreign national; that gold was found on the person and it had not been concealed; that the OIO was well reasoned and had justified the rationale for permitting redemption on principles of law; that there was only contravention of Section 77 of the Customs Act, 1962 for which the OAA had imposed fine and penalty; that the applicant was the owner of the goods had not been appreciated by the AA; that evasion of Customs duty can be done only in respect of dutiable goods and not on prohibited goods; that once goods are accepted as dutiable goods then option to redeem the goods under Section 125 of the Customs Act, 1962 ought to have been granted by the AA; that various judgements passed by the Apex Court, High Courts, Tribunal have held that gold was neither restricted nor prohibited and therefore it should not be confiscated absolutely;

5.02. to buttress their case, the applicant has relied upon the following case laws;

(i). Vigneswaran Sethuraman vs UOI, Kerala High Court 2014 (308) ELT 394 (Ker.); Gold jewellery worn by foreign tourist was allowed

(ii). Hargovind Das K Joshi v/s. Collector of Customs [1992 (61) ELT 172 SC], Absolute confiscation of goods without considering question of

redemption on payment of fine although having discretion to do so under Section 125, matter remanded back.

(iii). Alfred Menezes v/s. Commissioner of Customs (Mumbai) [2011 (236) ELT 587 (Tri-Mumbai)], Section 125(1) ibid clearly mandates that it is within the power of the adjudicating authority to offer redemption of goods even in respect of prohibited goods.

(iv). Collector of Custom vs. Elephanta Oil and Inds. Ltd [2003(152) ELT 02547 Supreme Court]; once imported article is re-exported as directed by the department, there is no question of levying any penalty or redemption fine.

(v). Kusum Bhai DayaBhai vs. Commr. Of Customs 1995 (79) ELT 292 Tri-Mumbai; If goods are allowed re-export on redemption, fine can be on the lower side and need not relate to margin of profit.

(vi). A.K Jewellers vs. Commissioner of Customs, Mumbai, 2003 (155) ELT 585 Tri-Larger Bench; Re-export of confiscated goods, first to be redeemed on payment of fine and then to be exported. Combination of both these actions in one order is not contrary to law.

(vii). Patel vs. Commr. Of Customs; 2003-153-ELT-226-Tr. ; that when the importer makes a request for re-export, it has been a general practice in Custom House to consider such a request having regard to the bona-fides of such a request. By re-exporting the goods, the importer can avoid payment of duty but not the fine in lieu of confiscation.

(viii). Etc.

Applicant has prayed that the impugned OIA be set aside and the OIO be restored, RF and PP may be reduced; or to pass any other order as deemed fit.

6. Personal hearing through the online video conferencing mode was scheduled for 02.08.2022. Shri. N.J Heera, Advocate, for the applicant appeared for physical hearing and submitted that it is a case where jewellery was worn by Sri Lankan national. He requested to allow re-export of goods on nominal RF and penalty.

7. The Government notes that the quantum of gold recovered from the applicant is not substantial; that impugned gold was in the form of jewellery which had been worn by her; that the applicant was a foreign national; that the

OAA had granted option to the applicant to redeem the impugned gold jewellery on payment of a redemption fine of Rs. 4,50,000/- under Section 125(1) of the Customs Act, 1962; that a penalty of Rs. 2,25,000/- had been imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962; that the option to release the goods is the discretion available to OAA under Section 125 of the Customs Act, 1962 to be applied based on the facts of the case.

8. Considering the quantum of gold jewellery; that applicant was a foreign national, that gold jewellery had been worn; that gold jewellery had not been concealed, Government notes the request of applicant that the ratio of the order passed by the Hon'ble Kerala High Court in WP no. 6281 of 2014 in the case of Vigneswaran Sethuraman vs. U.O.1 [2014 (308) ELT 394 (Ker.)] is broadly applicable to this case.

9. In a recent judgement passed by the Hon'ble High Court, Madras on 08.06.2022 in WP no. 20249 of 2021 and WMP No. 21510 of 2021 in r/o. Shri. Chandrasegaram Vijayasundarm + 5 others in a similar matter of Sri. Lankans wearing 1594 gms of gold jewellery (i.e. around 300 gms worn by each person) upheld the Order no. 165 - 169/2021-Cus (SZ) ASRA, Mumbai dated 14.07.2021 in F.No. 380/59-63/B/SZ/2018-RA/3716, wherein Revisionary Authority had ordered for the confiscation of the gold jewellery but had allowed the same to be released for re-export on payment of appropriate redemption fine and penalty.

10. For the aforesaid reasons, Government is inclined to allow the prayer put forth by the advocate of the applicant during the personal hearing for re-export of the impugned gold jewellery.

11. Government finds that the penalty of Rs. 2,25,000/- imposed on the applicant under Section 125(a) and (b) of the Customs Act, 1962 constitutes

nearly 14% of the seizure value. Government finds that the same is harsh and unreasonable and is inclined to reduce the same.

11. Therefore, for the aforesaid reasons, Government sets aside the OIA passed by the AA and partly restores the OIO passed by OAA by modifying the same to the extent of allowing the re-export of the gold jewellery, totally weighing 586.90 grams, valued at Rs. 15,69,418/- on payment of a redemption fine of Rs. 3,00,000/- (Rupees Three Lakhs only). Penalty of Rs. 2,25,000/- imposed on applicant under Section 112(a) and (b) of the Customs Act, 1962 by the OAA is harsh and excessive and is not commensurate with the omissions and commissions committed. The Government therefore, reduces the penalty to Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only).

12. The Revision application is disposed of on the above terms.

Shreeveer
31/10/22
(SHRAWAN KUMAR)

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

ORDER NO. 315 /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 31.10.2022.

To,

1. Smt. Mahamooddu Lebbe Samsiya, Sri Lankan National, (address not available in the records)
2. Pr. Commissioner of Customs, Level – II, Terminal – 2, CSMI Airport, Sahar, Andheri (East), Mumbai – 400 099.

Copy to:

1. Smt. Mahamooddu Lebbe Samsiya C/o. Advani Sachwani & Heera, Advocates, Nulwala Building, 41, Mint Road, Opp. G.P.O, Fort, Mumbai – 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.