



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

F.No. 373/221 /B/14-RA / 1110

Date of Issue 08.02.2018

ORDER NO. 32 /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. Nona Fareena

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 671/2014 dated 11.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Nona Fareena (herein referred to as Applicant) against the order no 671/2014 dated 11.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly facts of the case are as follows, the applicant, a Sri Lankan national, arrived at the Chennai Airport on 28.11.2013. She was intercepted at the exit by the Customs officers while she attempted to go through the Green Channel without baggage declaration at the Red Channel. Examination of her baggage and person resulted in the recovery of two gold bangles totally weighing 47.8 gms valued at Rs. 1,25,266/-. The Original Adjudicating Authority vide Order-In-Original No. 1403/2013 Batch D dated 28.11.2013 ordered 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. However an option was given to redeem the goods on payment of redemption fine of Rs. 65,000/-, and imposed penalty of Rs. 13,000/- 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. 671/2014 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 seized gold is old and used and she has worn the same for more than several months. The seized gold chain her personal belonging and belonged to her and she did not bring it for monetary consideration.

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

4.3 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.

4.4 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.

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.

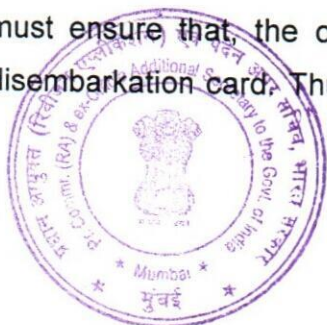
4.6 the absolute confiscation of the gold was unreasonable and personal penalty imposed was high and unreasonable .

The Revision Applicant has cited various assorted judgments in support of her Commissioner (Appeals) case, and prayed for reduction of the redemption fine and 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 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 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 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 when she was intercepted and it was not indigenously 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 instruction when the Disembarkation Card is not filled in stating, the Customs Officer must ensure that the oral declaration given by the passenger is to be recorded on the disembarkation card. Thus, mere non-submission of the declaration cannot be held against



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the Applicant, more so because she is a foreigner. Considering all factors, the Government is of the opinion that the impugned Order in Appeal therefore needs to be modified, and a more lenient view can be taken while imposing redemption fine and penalty upon the applicant.

8. Taking into consideration the foregoing discussion, the impugned Order in Appeal is liable to be modified. Accordingly, the redemption fine in lieu of confiscation under section 125 of the Customs Act, 1962 is reduced from Rs. 50,000/- (Rupees Fifty thousand) to Rs 25,000/- (Rupees Twenty five thousand). Government keeping in view the overall circumstances of the case, also reduces the penalty imposed by the Appellate Authority from Rs.10,000/- (Rupees Ten Thousand) to Rs. 5,000/- (Rupees Five thousand).

9. The impugned Order in Appeal 671/2014 dated 11.04.2014 is modified as detailed above. Revision Application is partly allowed.

10. So, ordered.

Quachler
21.1.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 32/2018-CUS (SZ) /ASRA/ MUMBAI DATED 31-01-2018

To,

Shri. Nona Fareena.
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

Sankarsan Munda
21/1/18

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.