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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. 373/181/^{B/}15-RA/¹⁰⁷5

Date of Issue 05/06/2018

ORDER NO. 326/2018-CUS (SZ)/ASRA/MUMBAI DATED 30.05.2018 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. Mynavathy Arumaithurai

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. 148/2014- Cus dated 19.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Mynavathy Arumaithurai (herein referred to as Applicant) against the order C. Cus-I. no 148/2014- Cus dated 19.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan National, arrived at the Chennai Airport on 13.11.2014 and was intercepted by the Customs officers examination of her baggage resulted in the recovery of one gold chain with pendant, Gold bangles and a gold ring totally weighing 161 grams valued at Rs. 3,89,667/- (Three lacs Eighty Nine thousand Six hundred and Sixty seven).

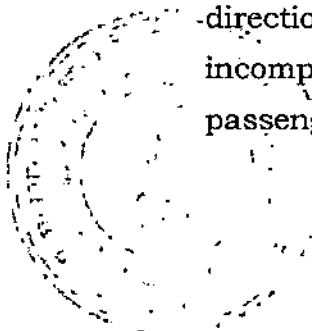
3. After due process of the law vide Order-In-Original No.1387/2014 Batch B dated 13.11.2014, the Original Adjudicating Authority absolutely confiscated all the under section 111(d),(l),(m) & (o) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 39,000/- was also imposed under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals-I) Chennai, vide his Order in Appeal C. Cus-I No. 148/2014- Cus dated 19.12.2014 allowed redemption of the gold for re-export on payment of redemption fine of Rs. 1,20,000/- and allowed the Appeal.

5. The applicant has filed this Revision Application interalia on the grounds that;

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The seized gold is used jewelry, and worn by the Applicant for several months; She was all along under the control of the officers at the Red channel there is no allegation that she cleared the green channel; She is the owner of the gold and the same has not been brought for monetary consideration; she was wearing the gold jewelry and also showed it to the officers having seen the same the question of declaration does not arise; That sha comes to India occasionally and was not aware of the procedure; Even assuming without admitting that she had not declared the gold it is only a technical fault;

5.2 The Applicant further pleaded that being a foreign national the question of eligibility does not arise; 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 the oral declaration; As per the circular 394/74/97-CUS



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(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 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;

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for reduction of redemption fine and reduced personal penalty and thus render justice.

5. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. It is a fact that the gold was not declared by the Applicant as required under Section 77 of the Customs Act, 1962, it is also noticed that the rest of the items were in commercial quantity and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant was intercepted before she exited the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold was worn by the Applicant and it was not ingeniously concealed. The CBEC Circular No. 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, moreso because she is a foreigner.

8. Further, 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 absolute confiscation of the gold is therefore harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for reduction of redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The redemption fine is reduced from Rs. 120,000/- (Rupees One lac Twenty thousand) to Rs1,00,000/- (Rupees One Lakh)



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. 39,000/- (Rupees Thirty Nine thousand) to Rs.25,000/- (Rupees Twenty Five thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

11. So, ordered.

(Signature)
7.5.2018

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

ORDER No. 326/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30-05-2018

To,

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

True Copy Attested

Copy to:

1. The Commissioner of Customs, Chennai
2. The Commissioner of Customs (Appeals), Chennai
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

(Signature)
SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

