



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

F.No. 373/270/<sup>B1</sup>/<sub>A</sub>15-RA | 6

Date of Issue 28/06/2018

ORDER NO. 349/2018-CUS (SZ)/ASRA/MUMBAI DATED 13.05.2018 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. Jaya Mary Wilma

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-I No. 673/2015 dated 29.10.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Jaya Mary Wilma (herein referred to as Applicant) against the order C. Cus-I. no 673/2015 dated 29.10.2015 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 06.05.2015 and was intercepted by the Customs officers examination of her person resulted in the recovery of three gold bars and a gold chain totally weighing 355 grams valued at Rs. 9,67,020/- (Rupees Nine lakhs Sixty Seven thousand and twenty only) from her inner wear worn by her.

3. After due process of the law vide Order-In-Original No.219/2015-16 Airport dated 07.08.2015, the Original Adjudicating Authority absolutely confiscated all the under section 111(d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 90,000/- 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. 673/2015 dated 29.10.2015 rejected the Appeal.

5. The applicant has filed this Revision Application inter alia 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 Appellate Authority has simply glossed over all the judgements and points raised in the Appeal grounds; The Applicant is the owner of the gold and was ready to pay customs duty ; she never passed the Green Channel and was all along under the control of the officers at the red channel; the averments of the authority that she received the gold from some unknown persons is not based on evidence; Section 125 of the Customs Act, 1962 does not make a distinction between the owner and carrier; On one side the Adjudication authority states that the Applicant is not the owner and also alleges that no declaration has been made, both these stands cannot be simultaneously maintainable.

5.2 The Applicant further pleaded that The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation;



*[Handwritten signature]*

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for re-export on redemption fine under section 125 of the Customs Act, 1962 and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

6. 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 cited the decisions of GOI/Tribunals where redemption for re-export of gold was allowed. Nobody from the department attended the personal hearing.

7. 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, and under the circumstances confiscation of the gold is justified.

8. 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 kept by the Applicants in her inner garments and not ingeniously concealed. There are no previous offences registered against the Applicant. 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 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 he is a foreigner. 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 re-export and the Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.

9. In view of the above, Government allows redemption of the confiscated gold for re-export in lieu of fine. The impugned gold weighing 355 grams valued at Rs. 9,67,020/- (Rupees Nine lakhs Sixty Seven thousand and twenty only) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 3,60,000/- (Rupees Three lacs Sixty thousand ) 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. 90,000/- (Rupees Ninety thousand) to Rs.75,000/- (Rupees Senety Five thousand ) under section 112(a) of the Customs Act,1962.

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

*(Handwritten Signature)*  
18.5.18

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

ORDER No. 349/2018-CUS (SZ) /ASRA/MUMBAI

DATED 18 05.2018

**True Copy Attested**

To,

Smt. Jaya Mary Wilma  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High Court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

*(Handwritten Signature)*  
28/6/18  
एस. आर. हिरुलकर  
S. R. HIRULKAR  
(AC)

Copy to:

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

