



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

F.No. 373/274/^{B1}/_A15-RA/2018

Date of Issue 28/06/2018

ORDER NO. 351 /2018-CUS (SZ)/ASRA/MUMBAI DATED 18.05.2018 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. Fathima Ribaya

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. 664/2015 dated 13.10.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Fathima Ribaya (herein referred to as Applicant) against the order C. Cus-I. no 664/2015 dated 13.10.2015 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 22.05.2015 and was intercepted by the Customs officers examination of her baggage and person resulted in the recovery of one gold chain, one bracelet and four gold bits totally weighing 558 grams valued at Rs. 15,41,196/- (Rupees Fifteen lakhs Forty one thousand One hundred and Ninety six) from ladies hand bag.

3. After due process of the law vide Order-In-Original No.227/2015-16 Airport dated 12.08.2015, 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. 1,50,000/- 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. 664/2015 dated 13.10.2015 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 she was wearing the same for several months and it was old; the same has not been brought for third party; She comes to India occasionally and was not aware of the procedure; The gold was worn by the Applicant earlier and not concealed and it is used jewelry; She was wearing the gold and had orally declared the gold and the same was visible and hence the question of declaration does not arise; The only allegation against her was that she did not declare the gold; The only allegation against her was that she did not declare the gold; Even assuming without admitting that he had not declared the gold it is only a technical fault; she never passed the Green Channel and was all along under the control of the officers at the red channel; She comes to India occasionally and was not aware of the procedure; Section 111 d, l, m, and o are not applicable to the case.

5.2 The Applicant further pleaded that being a foreign national the question of eligibility does not arise; and Eligibility question does not arise for a foreigner. As per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 states that



prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared; She never claimed that she is an eligible passenger.

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 he exited the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold was kept in the Applicants handbag 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 558 grams valued at Rs. 15,40,000/- (Fifteen lakhs Forty one thousand One hundred and Ninety six) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 6,00,000/- (Rupees Six Lakhs) 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. 1,50,000/- (Rupees One lakh Fifty thousand) to Rs.1,20,000/- (Rupees One lakh twenty 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.

(Signature)
18.5.2018

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

ORDER No.351/2018-CUS (SZ) /ASRA/Mumbai

DATED 18-05-2018

True Copy Attested

To,

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

(Signature)
21/6/18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A.C)

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.

