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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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F.No. 373/230/15-RA / 37

Date of Issue 28/06/2018

ORDER NO. 352/2018-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. Sharmila Devi

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.
237/2015 dated 29.05.2015 passed by the Commissioner of
Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Sharmila Devi (herein referred to as Applicant) against the order C. Cus-I. no 237/2015 dated 29.05.2015 passed by the Commissioner of Customs (Appeals), Chennai.

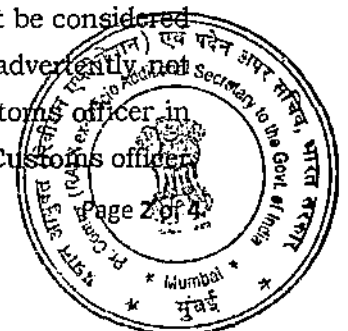
2. Briefly stated the facts of the case are that the applicant, a Sri Lankan National, arrived at the Chennai Airport on 17.05.2015 and was intercepted by the Customs officers examination of her person resulted in the recovery of six gold bangles totally weighing 148 grams valued at Rs. 3,79,047/- (Rupees three lakhs Seventy Nine thousand and Forty Seven) worn by her.

3. After due process of the law vide Order-In-Original No.539/2015 Airport dated 17.05.2015, 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. 38,000/- 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. 237/2015 dated 29.05.2015 rejected 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 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 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; That she had signed the computer generated statement as she was threatened with arrest; 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 As per the circular 394/71/97-CUS (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; Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer



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should help the passenger record to the oral declaration on the Disembarkation Card; 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.

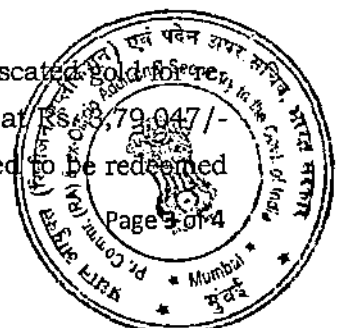
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for re-export on redemption fine under section 125 of the Customs Act, 1962 and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

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 148 grams valued at Rs. 3,79,047/- (Rupees three lakhs Seventy Nine thousand and Forty Seven) is ordered to be redeemed



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for re-export on payment of redemption fine of Rs. 1,50,000/- (Rupees One lakh Fifty 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. 38,000/- (Rupees Thirty Eight thousand) to Rs.30,000/- (Rupees Thirty 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.

Quacha
18.5.2018

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

ORDER No. 352/2018-CUS (SZ) /ASRA/MUMBAI

DATED 18.05.2018

True Copy Attested

To,

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

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रक्षणा
एस. आर. हिरुलकर
S. R. HIRULKAR
(A-1)

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.

