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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. 373/271/B/15-RA | 358

Date of Issue 29/06/2018

ORDER NO. ³⁵⁸/2018-CUS (SZ) / ASRA / MUMBAI DATED 28.05.2018 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. Lwin Lwin Than

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.Cus-I No.682
& 683/2015 dated 30.10.2015 passed by the Commissioner of
Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Smt. Lwin Lwin Than (herein after referred to as the Applicant) against the Order in Appeal No. C. Cus-I No. 682 & 683/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 10.03.2015 and was intercepted by the Customs Officers and examination on his person resulted in the recovery of one gold chain four gold bangles and two gold anklets totally weighing 695 grams and valued at Rs. 19,00,825/- (Rupees Nineteen lakhs eight hundred and twenty five). After due process of the law vide Order-In-Original No. 211/2015-16 Airport dated 05.08.2015, the Original Adjudicating Authority absolutely confiscated the gold jewelry 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.1,90,000/- was also imposed under Section 112 (a) of the Customs Act,1962.

3. 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. 682 & 683/2015 dated 30.10.2015 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia on the grounds that;
4.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The Applicant is of Indian origin and having completed the required period of stay abroad was eligible for concessional rate of duty; the gold was brought for her marriage; As she was wearing the gold on her person baggage rules does not apply; she is not a frequent visitor or trader; The averments of the adjudicating Authority that he received the gold from his friend is not based on evidence and amounts to extraneous consideration; However, section 125 of the Customs Act, does not make any distinction between the carrier and owner; There are several judgements stating that the authorities should exercise powers vested in them under section 125 of the customs Act,1962; that Gold is not a prohibited item and according to the liberalized policy the gold can be released on payment of Redemption Fine and Penalty;



Goods must be prohibited before import or export simply because of non-declaration goods cannot become prohibited after import;

4.2 The Applicant Further pleaded that, In the case of Vigneswaran vs UOI in W.P. 6281of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner as the only undisputed fact is that the Applicant has not declared the gold and absolute confiscation is bad under law, further stating, I am constrained to set aside those portions of the impugned order in original confiscating the gold absolutely.; The Hon'ble High Court of Madras in the case of T. Elavarsan 2011 (266) ELT 167 (Mad) and in the case of Krishankumari 2008 (229) ELT 222 (Mad)ordered the gold to be released on concessional rate of duty.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of her case and pleaded for allowing re-export of the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 18.4.2018, 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 and under the circumstances confiscation of the gold is justified.

7. 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 worn by the Applicant and it was 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.

8. 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. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold jewelry weighing 695 grams and valued at Rs. 19,00,825/- (Rupees Nineteen lakhs eight hundred and twenty five) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 8,00,000/- (Rupees Eight 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. 1,90,000/- (Rupees One Lakh Ninety) to Rs.1,50,000/- (Rupees One Lakh Fifty 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.

(Handwritten Signature)
28/5/18

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

ORDER No. ³⁵⁸ /2018-CUS (SZ) /ASRA/MUMBAI DATED 28.05.2018

To,

True Copy Attested

Smt Lwin Lwin Than
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

(Handwritten Signature)
28/5/18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals-I), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

