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Mumbai-400 005

B1
F.No. 373/188/15-RA

Date of Issue 29/06/2018

ORDER NO. 370/2018-CUS (SZ)/ASRA/MUMBAI DATED 31.05.2018 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. Parameshwary Kumaran

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 284/2015 dated 20.03.2015 passed by the Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Smt. Parameshwary Kumaran (herein referred to as Applicant) against the order no 284/2015 dated 20.03.2015 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the applicant, a Sri Lankan National had arrived at the Bangalore Airport on 19.02.2014. Examination of her person resulted in the recovery of a gold chain with four pendent and two gold bangles weighing 423.830 grams valued at Rs. 12,28,259/- (Rupees Twelve lakhs Twenty eight thousand Two hundred and Fifty Nine).

3. The Original Adjudicating Authority, vide order No. 49/2014 dated 20.02.2014 absolutely confiscated the gold chain mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 80,000/- was also imposed under Section 112 (a) of the Customs Act,1962. A personal penalty of Rs. 20,000/- was also imposed under section 114AA of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Bangalore The Commissioner of Customs (Appeals) Bangalore, vide his order No. 284/2015 dated 20.03.2015 rejected the Appeal of the Applicant.

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 gold chain was Thalli and was worn by the Applicant and not concealed and it is used jewelry; she never passed the Green Channel and all along under the control of the customs officers, she requested for CCTV recordings but was ignored; As she was wearing the gold chain she showed it to the officers, having seen the gold the question of declaration does not arise; That she comes to India occasionally and was not aware of the procedure, hence adjudicating Authority should have allowed re-export; The case relates to import whereas the Authority has imposed penalty under Section 114AA which relates to export of goods; When penalty is imposed under section 114AA, penalty cannot be imposed under section 112 of the Customs Act; Even assuming without admitting that he had not declared the gold it is only a technical fault; Section 111 d, l, m and o are not attracted.

5.2 The Applicant further pleaded that being a foreign national the question of eligibility does not arise; As per the circular 394/71/97-CUS



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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 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 chain and other jewelry 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 chain was worn by the Applicant it being visible 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 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. Government also holds that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases.



9. In view of the above, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned gold chain weighing 423.830 grams valued at Rs. 12,28,259/- (Rupees Twelve lakhs Twenty eight thousand Two hundred and Fifty Nine) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 4,25,000/- (Rupees Four Lakhs Twenty five 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. 80,000/- (Rupees Eighty thousand) to Rs. 75,000/- (Rupees Seventy Five thousand) under section 112(a) of the Customs Act,1962. The penalty of Rs. 20,000/- (Rupees Twenty thousand) under section 114AA has been incorrectly imposed, the penalty is therefore set aside.

10. The impugned Order in Appeal stands modified to that extent.

11. Revision application is partly allowed on above terms.

12. So, ordered.

Ashok Kumar Mehta
21.5.2018
(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No.370/2018-CUS (SZ) /ASRA/(MUMBAI)

DATED 31-05-2018

True Copy Attested

To,

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

Copy to:

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

S. R. Hirulkar
28/6/18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A.C.)

