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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. 373/178/B/15-RA

Date of Issue 29/08/2018

ORDER NO. 373/2018-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 : Shri. Janatharsini Arumaithurai

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. 149/2014
dated 19.12.2014 passed by the Commissioner of Customs
(Appeals), Chennai.



ORDER

This revision application has been filed by Shri Janatharsini Arumaithurai (herein referred to as Applicant) against the order 149/2014 dated 19.12.2014 passed by the Commissioner of Customs (Appeals), Bangalore.

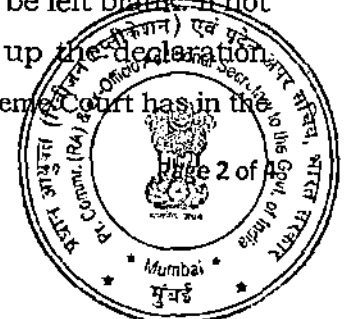
2. Briefly stated the facts of the case are that the applicant, holding Sri Lankan passport holder, arrived at the Chennai Airport on 13.11.2014 and was intercepted by the Customs Officers and examination on her person resulted in the recovery of one gold chain with pendant weighing 120 grams and valued at Rs. 2,90,435/- (Rupees Two lakhs Ninety Thousand Four hundred and thirty five). After due process of the law vide Order-In-Original No. 1388/2014 Batch B dated 13.11.2014, 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. 30,000/- 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. 149/2014 dated 19.12.2014 allowed re-export on payment of redemption fine of Rs. 90,000/- and allowed the Appeal.

4. The applicant has filed this Revision Application interalia 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 gold is used gold and has been worn for the past several months; Being a foreign national she was not aware of the law; She was all along under the control of the officers at the Red channel and has not passed through the Green Channel; She was wearing the gold chain at the time of interception and when enquired she showed it to the officers, having seen the same the question of declaration does not arise; being a foreigner the question of eligibility does not arise; Even assuming without admitting that he had not declared the gold it is only a technical fault.

4.2 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; CBEC circular No. 09/2001 gives specific directions to the officers that the declaration should not be left blank. If not filled in by the passenger the officer will help in filing up the declaration card; The Applicant Further pleaded that, The Hon'ble Supreme Court has in the



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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;

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. At first he pleaded that the delay in filing the Revision Application by 30 days may be condoned as the adjudication order was misplaced by the Applicant inadvertently. 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. In the interest of justice, delay of 30 days is condoned and revision application is decided on merits. 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 moreso because she 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. 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 reduction of redemption fine and penalty and the Government is inclined to accept the plea

8. Taking into consideration the foregoing discussion, Government reduces the redemption fine and penalty on the gold jewelry weighing 120 grams and valued at Rs. 2,90,435/- (Rupees Two lakhs Ninety Thousand Four hundred and thirty) from Rs. 90,000/- (Rupees Ninety thousand) to Rs. 80,000/- (Rupees Eighty 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. 30,000/- (Rupees Thirty thousand) to Rs.20,000/- (Rupees Twenty thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

10. So, ordered.

(Signature)
21.5.18
(ASHOK KUMAR MEHTA)

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

ORDER No.373/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31-05.2018

To,

Shri Janatharsini Arumaithurai
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

True Copy Attested

(Signature)
21/5/18
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.

