

ORDER

This revision application has been filed by Smt. T. Srivani (herein referred to as Applicant) against the order 64/2016 dated 04.04.2016 passed by the Commissioner of Customs (Appeals), Trichy.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, a Sri Lankan citizen, at the arrival hall of the Trichy International Airport on 24.04.2014. Examination of her person resulted in recovery of a gold chain and eight gold bangles worn by the Applicant, totally weighing 396 grams valued at Rs. 11,16,324/- (Rupees Eleven Lakhs Sixteen thousand Three hundred and Twenty four).

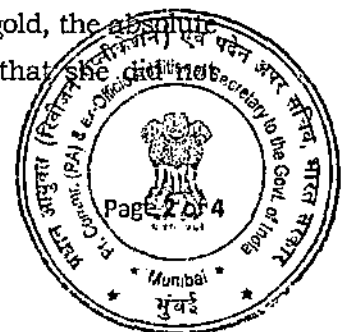
3. The Original Adjudicating Authority, vide order No. 52/2015 dated 25.09.2015 absolutely confiscated the gold mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, But allowed redemption of the gold on payment of Rs. 3,00,000/- A Personal penalty of Rs. 1,00,000/- was 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) Trichy. The Commissioner of Customs (Appeals) Trichy, vide his order No. 64/2016 dated 04.04.2016 rejected the Appeal of the Applicant.

5. Aggrieved with the above order 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 not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The only allegation against her is that she did not declare the gold; The gold is used and has been worn for several months; The gold was worn and having seen the visible gold the question of declaration does not arise; She never tried to cross 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; The question of eligibility to bring gold does not arise for the foreigner; Even assuming without admitting that she did not declare the gold it is only a technical fault.

5.2 The Applicant further pleaded that In the case of Vigneswaran vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner, observing that only because of not declaring the gold, the absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold;



5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for allowing re-export and reduction of the redemption fine and reduce personal penalty and thus render justice.

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 submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. The goods were not declared by the passenger as required under Section 77 of the Customs Act, 1962. Under the circumstances confiscation of the goods is justified.

8. However, the Applicant was not intercepted while trying to exit the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant is not a frequent traveller and does not have any previous offences registered against her. Government, also observes that there is no allegation of ingenious concealment and the Applicant had worn the gold. Further, 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. The absolute confiscation is therefore unjustified.

9. Further, 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 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 goods are 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. A lenient view can be taken for reducing the penalty under section 112 of the Customs Act, 1962.

10. In view of the above, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned gold totally weighing 396 grams valued at Rs. 11,16,324/- (Rupees Eleven Lakhs Sixteen thousand Three hundred and Twenty four)



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is ordered to be redeemed for re-export on payment of redemption fine. The redemption fine of Rs. 3,00,000/- (Rupees Three lakhs) is reduced to Rs. 2,50,000/- (Rupees Two lakhs Fifty thousand) under section 125 of the Customs Act, 1962. Government reduces the penalty of Rs. 1,00,000/- (Rupees One lakh) to Rs. 50,000/- (Rupees Fifty thousand).

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

12. So, ordered.

(Handwritten Signature)
5/1/18

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

ORDER No.397/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 05-06-2018

Attested

To,

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

Attested

(Handwritten Signature)
11/7/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

