

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/80/B/16-RA

Date of Issue 12/07/2018

ORDER NO. 456/2018-CUS (SZ)/ASRA/MUMBAI DATED 07.06.2018 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. Fameedu

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 279/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.



ORDER

This revision application has been filed by Smt. Fameedu (herein referred to as Applicant) against the order 279/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, A Sri Lankan national, at the Bangalore International Airport on 26.04.2014. The Applicant had not declared the goods and had opted for the green channel. Examination of her person resulted in recovery of three long chains of gold weighing 470.20 grams valued at Rs. 14,27,997/- (Rupees Fourteen Lakh Twenty seven thousand Nine hundred and Ninety Seven). The gold chains were wrapped in insulation tape and concealed in her Brasierre.

3. The Original Adjudicating Authority, vide order No.104/2014 dated 26.04.2014 absolutely confiscated the gold mentioned above under section 111(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. 1,50,000/- was imposed under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 75,000/- 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. 279/2016 dated 31.03.2016 rejected the Appeal.

5. Aggrieved with the above order 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 not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The ownership of the gold is not disputed and there is no ingenious concealment; The gold is used and has been worn for several months; The gold was worn and was orally declared, having seen the visible gold the question of declaration does not arise; She was all along under the control of the officers at the red channel and had not crossed the green 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; The Applicant has not made any false declaration or submitted false documents and hence does not attract penalties under section 114AA.



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; 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 the oral declaration; 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;

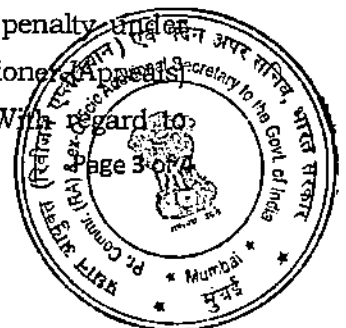
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for allowing re-export and reduction of the redemption fine and reduce personal penalty and thus render justice.

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 case records it is observed that the Applicant did not declare the gold as required under Section 77 of the Customs Act, 1962. The gold chains were wrapped in black insulation tape and kept concealed in her brassiere. This indicates that the Applicant was well aware that the gold is required to suffer customs duty and therefore it was ingeniously concealed in the inner garments worn by the Applicant. There is absolutely no doubt that the concealment was intelligently planned so as to avoid detection and evade Customs duty and to smuggle the gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner and properly declared as per Section 77 of the Customs Act, 1962. If she was not intercepted before the exit, the Applicant would have again taken out the gold without payment of customs duty. The absolute confiscation of the gold is therefore necessary so as to deter, and discourage such activities in future.

आवृत्त नमूना

In view of the above seized gold is liable for confiscation under Section 111 of Customs Act, 1962 and the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalty under section 112 of the Customs Act, 1962 on the Applicant. The Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. With regard to



penalty under section 114AA, Government holds that the declaration under Section 77 of the Customs Act, 1962 is required to be submitted under baggage rules and no penalty is imposable under section 114AA of the Customs Act,1962 as this provision is not attracted in baggage cases. The penalty of Rs. 75,000/- (Rupees Seventy Five thousand) under section 114AA has been incorrectly imposed, the penalty is therefore set aside.

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

10. So, ordered.


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

ORDER No. 406/2018-CUS (SZ) /ASRA/MUMBAI

DATED 07.06.2018

To,

Smt. Fameedu
 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.

ATTESTED


SANKARSAN MUNDA
 Asstt. Commissioner of Custom & C. Ex.

