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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. 373/04/B/16-RA/807 Date of Issue 16/07/2018

ORDER NO. 422/2018-CUS (SZ)/ASRA/MUMBAI DATED 15.06.2018 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. Fathima Rizwana

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 696/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Smt. Fathima Rizwana (herein referred to as Applicant) against the order 696/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant at the Chennai International Airport on 18.09.2015. The Applicant had not declared the goods and had opted for the green channel. Examination of her baggage and person resulted in recovery of four gold bars, kept in her hand baggage totally weighing 200 grams valued at Rs. 4,81,419/- (Rupees Four lakhs Eighty one thousand Four hundred and nineteen).

3. The Original Adjudicating Authority, vide order No. 1011/2015 Batch B dated 18.09.2015 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. A Personal penalty of Rs. 48,500/- 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) Chennai. The Commissioner of Customs (Appeals) vide his order No. 696/2015 dated 30.10.2015 upheld the absolute confiscation of the gold and 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 Applicant was intercepted at the scan area and not while passing the green channel; Gold is not a prohibited item and as per the liberalized policy it can be released on payment of redemption fine and penalty; that he never tried to cross the green channel, she was all along under the control of the officers at the red channel, the CCTV video record if made available can establish the truth; Customs duty is mandatory but fine and penalty is not , especially as the Applicant had not tried to pass through the Green Channel; The Appellant is not a frequent traveller; Goods must be prohibited before import or export simply because of non-declaration goods cannot become prohibited; Section 125 of the Customs Act,1962 allows release of the goods to the person from whose possession it was seized.

5.2 The Applicant further pleaded that as per the Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi-judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner

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. The Applicant is not a frequent traveler and does not have any previous offences registered against her. Government, also observes that though there concealment there is no allegation of ingenious concealment. 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.

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 200 grams valued at Rs. 4,81,419/- (Rupees Four lakhs Eighty one thousand Four hundred and nineteen) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 2,00,000/- (Rupees Two 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. 48,500/- (Rupees Forty Eight thousand Five hundred) to Rs. 40,000/- (Rupees Forty Thousand) under section 112(a) of the Customs Act,1962. .

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

12. So, ordered.

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

ORDER No.423/2018-CUS (SZ) /ASRA/Mumbai DATED 15.06.2018

To,

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

Attested

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

Copy to:

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