

373/123/B/14-RA

REGISTERED
SPEED POST



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

F.No. 373/123/B/14-RA / 1132

Date of Issue 13.02.2018

ORDER NO. 43/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 12.02.2018 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. Parvathi

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 1838/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Parvathi (herein referred to as Applicant) against the order 1838/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, arrived at the Chennai Airport on 18.12.2012. Examination of her baggage and person resulted in the recovery of semi finished gold chain and gold bangles totally weighing 155.8 gms valued at Rs. 4,52,599/- . The Applicant did not declare the gold and attempted to walk through the green channel. After due process of the law the Lower adjudicating Authority ordered confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and allowed redemption on payment of fine of Rs. 2,50,000/- imposed penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 1836/2013 dated 05.12.2013 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application interalia on the following grounds that;

4.1. the order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case.

4.2 she did not pass through the green channel. She was all along at the red channel under the control of the Customs Officers.

4.3 a married woman is required to wear a "thalli "(Thirumangaliyam) and she was wearing the same and it was not for trade or commercial use. Secondly as it was visible to the naked eye therefore the question of declaration does not arise.

4.4 the seized gold chain and bangles were personal belongings not brought for purposes, and is old and used, The Applicant has been using it for several years.

4.5 she requested the officers to allow her to take back the gold when leaving India which was not considered.

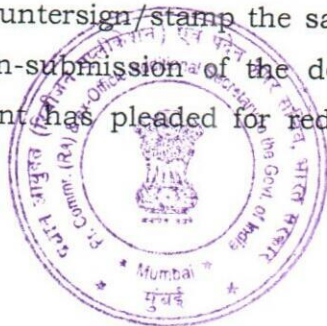
4.6 the seized gold was not concealed in any manner



- 4.7 Even assuming without admitting she had not declared the gold before the officers it is a technical fault and is pardonable. Secondly, CBEC Circular 09/2001 gives specific directions to the Customs officer that the declaration should not be blank, if not filled in by the passenger the officer will help them to fill the declaration card.
- 4.8 Moreover the redemption fine of Rs. 2,50,000/- and personal penalty of Rs. 50,000/- imposed was very high and unreasonable.

The Revision Applicant also cited various assorted judgments in support of her case, and prayed for return of the "Thalli" chain and the gold bangles without payment of redemption fine and reduce the personal penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.
6. The Government has gone through the case records it is observes that the gold was worn by the Applicant. But the gold was not declared by the passenger as required under Section 77 of the Customs Act, 1962. Thus there was an attempt to evade the payment of Customs duty. Under the circumstances confiscation of the gold is justified.
7. However, the goods were not in commercial quantity and from the facts of the case it appears that gold jewelry was not ingeniously concealed. The Applicants ownership of the gold jewelry is not disputed. Being of Indian origin she was wearing a thalli as is customary in South India. The gold also is not in primary form but is in the form of personal jewelry. There is no evidence to show that it was brought for sale or brought for third person for monetary consideration. 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 passenger record the O.D 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 applicant has pleaded for reduction of



redemption fine and penalty. Government is inclined to accept the plea. Considering all factors, the Government is of the opinion that a lenient view can be taken while imposing redemption fine and penalty, the impugned Order in Appeal therefore needs to be modified.

9. Taking into consideration the foregoing discussion, Government modifies the impugned Order in Appeal. Accordingly, the redemption fine in lieu of confiscation under section 125 of the Customs Act, 1962 imposed on 155.8 gms of gold jewelry totally valued at Rs. 4,52,599/- (Four lacs Fifty two thousand five hundred and ninety nine) is reduced from Rs. 2,50,000/- (Rupees Two lacs fifty thousand) to Rs.1,25,000/- (Rupees One lac twenty five thousand). Government keeping in view the overall circumstances of the case, also reduces the penalty imposed by the Appellate Authority from Rs. 50,000/- to Rs. 30,000/- (Rupees Thirty thousand). The appropriate Customs duty leviable on the redeemed goods shall be required to be paid in accordance with the Customs Act,1962 and rules framed thereunder.

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

10. So, ordered.

(Signature)
12.2.18

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

ORDER No.43/2018-CUS (SZ) /ASRA/MUMBAI

DATED 12.02.2018

To,

Smt. Parvathi
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

(Signature)
12.2.18
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), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

