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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. 373/67/B/17-RA | 309

Date of Issue 17/07/2018

ORDER NO. 437/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 20.06.2018 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. Nafisa BTE Mohamed Kunju.

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 No. 78/2017 dated 10.04.2017 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Nafisa BTE Mohamed Kunju (herein referred to as Applicant) against the order no 78/2017 dated 10.04.2017 passed by the Commissioner of Customs (Appeals), Chennai.

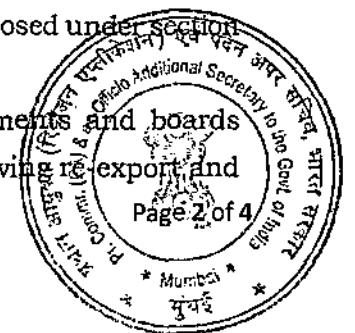
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 10.10.2016. The Examination of her baggage and person resulted in the recovery of two gold chains from her pant pockets totally weighing 199.5 grams totally valued at Rs. 6,06,081/- (Rupees Six lakhs Six thousand and eighty one) and 10 (Ten) I-phone 7s valued at 4,60,000/- (Rupees Four lakhs Sixty thousand) After due process of the law vide Order-In-Original No. 253/2016-17 AIRPORT dated 30.01.2017 the Original Adjudicating Authority absolutely confiscated the impugned goods totally valued at Rs. 10,66,081/- under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and also imposed penalty of Rs. 1,00,000/- under Section 112 (a). A penalty of Rs. 5,000/- was also imposed under section 114AA of the Customs Act,1962.

3. Aggrieved by the said order, the applicant filed appeal before. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 78/2017 dated 10.04.2017 rejected the appeal of the applicant.

4. Aggrieved with the above order the Applicant has filed this revision application inter alia 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 Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; The Applicant is of Indian origin her parents migrated to Singapore after getting married; The Applicant is an eligible passenger for concessional duty; The Applicant has retracted her statement on the same day ; Gold is not a restricted item not prohibited and the i-phones are dutiable goods; While at the Red channel she informed the officers that the jewelry is for personal use and the mobile phones were gifts for relatives; She is not a frequent visitor and she came to India for treatment; She informed the officers that she was willing to pay duty but it was not acceded to by the officers; She was intercepted at the hand baggage scan area and was all along under the control of the officers at the red channel and had not crossed the green Channel; The case relates to import whereas the Authority has imposed penalty under Section 114AA which relates to export of the goods; When penalty is imposed under section 114AA, penalty cannot be imposed under section 112 of the Customs Act.

4.2 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.

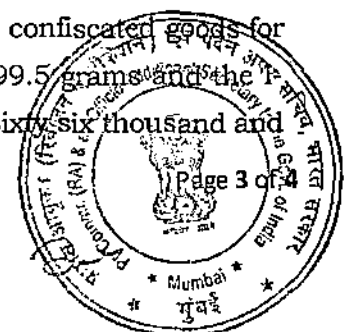
5. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

6. 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.

7. However, the Applicant had not yet crossed the Green Channel. There was no concerted attempt at smuggling these goods into India. The ownership of the goods is not disputed. The Applicant is not a frequent traveler and does not have any previous offences registered against her. Government, also observes that the Applicant had carried the gold in her pant pockets and there is no allegation of ingenious concealment. The Applicant is eligible for concessional rate of duty. 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, moreso because she is a foreign national. The absolute confiscation is therefore unjustified.

8. 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 the declaration 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.

9. In view of the above, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned gold totally weighing 199.5 grams and the 4 phones totally valued at Rs. 10,66,081/- (Rupees Ten Lakhs Sixty six thousand and



Eighty one) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 4,00,000/- (Rupees Four 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. 1,00,000/- (Rupees One lakh) to Rs. 80,000/- (Rupees Eighty thousand) under section 112(a) of the Customs Act,1962. The penalty of Rs. 5,000/- (Rupees five thousand) under section 114AA has been incorrectly imposed, the penalty is therefore set aside.

9. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So, ordered.

Ashok Kumar Mehta
20.6.18

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

ORDER No. 437/2018-CUS (SZ) /ASRA/MUMBAI

DATED 20-06-2018

Attested

To,

Smt. Nafisa BTE Mohamed Kunju
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, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

Sankarsan Munda
17.7.18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

