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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. 373/194/B/14-RA

Date of Issue 18/07/2018

ORDER NO. ⁴⁴⁰ /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. Mohamed Mohideen Rasheeth Khan Fathima Miffila

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.
451/2014 dated 12.03.2014 passed by the Commissioner of
Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Mohamed Mohideen Rasheeth Khan Fathima Miffa (herein referred to as Applicant) against the order no 451/2014 dated 12.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri lankan National arrived at the Chennai Airport on 23.09.2012. The Examination of her person resulted in the recovery of a gold chain and six gold bangles weighing 504 grams totally valued at Rs. 16,05,240/- (Rupees Sixteen lakhs Five thousand Two hundred and Forty) worn by the Applicant. After due process of the law vide Order-In-Original No. 743/04.11.2013 the Original Adjudicating Authority confiscated the impugned gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. But allowed redemption of the gold on payment of fine of Rs, 8,00,000/- and also imposed penalty of Rs. 2,00,000/- under Section 112 (a).

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. 451/2014 dated 12.03.2014 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 bad in law, weight of evidence and probabilities of the case; The Applicant did not cross the customs barrier and under the circumstances the import itself is not completed; The lower authority ought to have seen that baggage is not merely confined to bonafide baggage as per section 79 of the Customs Act,1962; the high redemption fine of 50% is without substantial reasoning and imposed in an arbitrary manner; The gold was visible to the naked eye; For mere non-declaration the redemption fine and penalty is too high and harsh; The gold was worn by the applicant and under the circumstances there is no concealment.



4.2 The Applicant prayed that this Hon'ble Forum may be pleased to set aside the order of to Lower authorities and to set aside the order of absolute confiscation and also order for Re Export of the goods and thus render justice.

5. A personal hearing in the case was scheduled to be held on 30.05.2018, the Advocate for the respondent Shri A. Ganesh reiterated the submissions in the Revision Application and requested for reduction in fine and penalty. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The goods were not properly declared and under the circumstances confiscation of the goods is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The gold was worn by the Applicant and it was not ingeniously concealed. The ownership of the gold is not disputed. The Applicant is not involved in such offences earlier. 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. The Government is of the opinion that the redemption fine and penalty is on the higher side and a lenient view can be taken in the matter. The Applicant has pleaded reduction of the redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified and the confiscated goods is liable to be allowed for redemption on reduced redemption fine and penalty.

8. In view of the above, the redemption fine imposed on the gold weighing 504 grams totally valued at Rs. 16,05,240/- (Rupees Sixteen lakhs Five hundred and Forty) is reduced from Rs. 8,00,000/- (Rupees Eight lakhs) to Rs. 5,00,000/- (Rupees Five 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. 2,00,000/- (Rupees Two lakhs) to Rs1,00,000/- (Rupees One lakh) under section 112(a) of the Customs Act,1962.



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

10. So, ordered.

(Signature)

20/6/18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁴⁴⁰ /2018-CUS (SZ) /ASRA/Mumbai.

DATED 20.06.2018

To,

Smt. Mohamed Mohideen Rasheeth Khan Fathima Miffla
C/o A. Ganesh, Advocate,
F. Block, 179, (New No. 8)
Annanagar,
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Tamilnadu

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.

Attested

(Signature)

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

