



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

F.No. 373/101/B/17-RA / 98^{iv}

Date of Issue 18/07/2018

ORDER NO. 443/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 21.06.2018 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. Dawood Rifka

Respondent : Commissioner of Customs(Airport), Cochin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 25/2017 dated 25.05.2017 passed by the Commissioner of Customs (Appeals) Cochin.



ORDER

This revision application has been filed by Smt. Dawood Rifka (herein after referred to as the Applicant) against the order C. Cus No. 25/2017 dated 25.05.2017 passed by the Commissioner of Customs (Appeals), Cochin

2. Briefly stated the facts of the case is that the applicant, a Sri Lankan citizen arrived at the Cochin Airport on 29.10.2015. Examination of her person resulted in the recovery of assorted gold jewelry worn by the Applicant beneath her clothes totally weighing 361.360 grams valued at Rs. 9,82,899/- (Rupees Nine lakh Eighty two thousand and Eight hundred and Ninety nine).

3. The Original Adjudicating Authority vide Order-In-Original No. 17/2017 dated 17.02.2017 ordered absolute confiscation of the impugned gold under Section 111 d), (j) (m) and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 1,00,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 25/2017 dated 25.05.2017 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following 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 simply glossed over all the judgements and points raised in the Appeal grounds; Baggage rules can be applied when goods are found in baggage; the adjudication authority has failed to confiscate the purdah which was used to conceal the gold; The Appellate authority failed to appreciate that there is a difference between complete prohibition and restriction; When goods are not prohibited the discretion of allowing the goods on redemption fine and penalty has to be exercised; Ownership of the gold is not disputed and there is no ingenious concealment; the Applicant was wearing the gold and also showed it to the officers , having seen the gold the question of declaration does not arise;

5.2 The Applicant further pleaded that as per the case of Vigrieswaran vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014 the Hon'ble High Court of Kerala has held that there is no law preventing foreigners visiting India from wearing gold ornaments and directed the revenue to unconditionally return the gold to the petitioner



observing that only because of not declaring the gold, absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold.

5.3 The Revision Applicant cited various assorted judgments in support of her case and *prayed for re-export of the gold on redemption fine and personal penalty.*

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in 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.

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. There is also no allegation of the Applicant trying to pass through the green channel. *The ownership of the gold is not disputed.* Government, also observes that the gold was worn by the Applicant and not ingeniously concealed. The Applicant is a frequent traveler, and yet there are no previous *offences registered against her.* 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 foreigner.*

9. 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 on redemption fine and reduced personal penalty and the Government is inclined to accept the plea. The absolute confiscation in the impugned Order in Appeal therefore *needs to be modified and the confiscated goods are liable to be allowed for re-export on redemption fine and penalty.*

10. In view of the above, Government allows redemption of the confiscated gold bits for re-export in lieu of fine. The gold jewellery weighing 361.360 grams valued at Rs. 9,82,899/- (Rupees Nine lakh Eighty two thousand and Eight hundred and Ninety



nine) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 3,75,000/- (Rupees Three lakhs seventy five thousand) 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. 75,000/- (Rupees Seventy Five 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. 443/2018-CUS (SZ) /ASRA/mumbai2.

DATED 01-06-2018

To,

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

Attested


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

