



सत्यमेव जयते

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

F.No. 373/202/B/16-RA

Date of Issue 19/07/2018

ORDER NO. 461 /2018-CUS (SZ)/ASRA/MUMBAI DATED 26.06.2018 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. Matilda

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 159 to 161/2016 - TRY(CUS) dated 17.08.2016 passed by the Commissioner of C. Ex. (Appeals-II), Trichy.



ORDER

This revision application has been filed by Smt. Matilda (herein referred to as Applicant) against the order 159 to 161/2016 – TRY(CUS) dated 17.08.2016 passed by the Commissioner of C. Ex. (Appeals-II), Trichy.

2. Briefly stated facts of the case are that the Officers of Air Intelligence Unit intercepted the applicant, a Sri Lankan national at the Trichy International Airport on 13.02.2015 as she was walking towards the exit. Examination of her person resulted in recovery of a two gold bangles one pair of gold leg chains and two gold foot rings concealed in the waist area beneath worn by her totally weighing 242.5 grams valued at Rs. 6,68,815/- (Rupees Six lakhs Sixty eight thousand Eight hundred and Fifteen).

3. The Original Adjudicating Authority, vide order No. 19/2015-ADC(CCO) dated 14.12.2015 absolutely confiscated the gold mentioned above under section 111(d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 1,20,000/- 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) Trichy, vide his order No. 159 to 161/2016 – TRY(CUS) dated 17.08.2016, The Commissioner (Appeals) 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; Gold is not a prohibited item and as per the liberalized policy gold can be released on redemption fine and baggage duty; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; Baggage rules will apply when goods are recovered from the baggage, the Applicant was wearing the gold; Goods must be prohibited before import or export, mere non-declaration cannot make the goods prohibited; The Applicant never passed the Green Channel she was all along at the Red channel under the control of the officers; The adjudication authority order stating that the gold was received from unknown persons is amounting to extraneous consideration; The order one way states that the passenger has not declared the gold and on the other hand states that Applicant is not the owner of the gold, even assuming without admitting the Applicant is not the owner then the question of declaration does not arise, as only the owner can file a declaration; The applicant had worn the gold on her person and showed it to the officers, having seen the gold the question of declaration does not arise.



5.2 The Applicant further pleaded that in the case of Vigneswaran vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner, observing that only because of not declaring the gold, the absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold, the gold chain was worn by the petitioner and he was not bound to declare it as it was carried as baggage, and levying of penalty is illegal, arbitrary and unjust.

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 had not yet crossed the Green Channel. The gold jewelry was concealed by the Applicant in the waist area, however and there was no ingenious concealment. There was also no concerted attempt at smuggling these goods into India. The Applicant is not a frequent traveler and does not have any previous offences registered against her. Government, also observes that. 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, more so because she is a foreign national. 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.



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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 242.5 grams valued at Rs. 6,68,815/- (Rupees Six lakhs Sixty eight thousand Eight hundred and Fifteen) is ordered to be redeemed for re-export on payment of redemption fine of Rs.2,40,000/- (Rupees Two lakhs forty 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. 1,20,000/- (Rupees One Lakh Twenty thousand) to Rs. 60,000/- (Rupees Sixty 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
26/6/18

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

ORDER No. 46/2018-CUS (SZ) /ASRA/MUMBAI

DATED 26.06.2018

To,

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

Attested

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

