



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

F.No. 373/240/B/16-RA

Date of Issue 24/07/2018

ORDER NO. 474/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.06.2018 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 : Shri Fathima Ruzna

Respondent : Commissioner of Customs(Airport), Cochin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 185/2016 dated 18.11.2016 passed by the Commissioner of Customs (Appeals) Cochin.



ORDER

This revision application has been filed by Shri Fathima Ruzna (herein after referred to as the Applicant) against the order no 185/2016 dated 18.11.2016 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 26.08.2016. Examination of her person resulted in the recovery of one Gold chain with locket, three bracelets 10 bangles and 8 cut gold pieces and fourteen gold bangles totally weighing 586.13 grams valued at Rs. 17,47,254/- (Seventeen Lakhs Forty seven thousand Two hundred and Fifty four). The gold jewelry was worn by the applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 270/2016 dated 26.08.2016 ordered absolute confiscation of the impugned gold under Section 111 (d), (i) (l) and (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 50,000/- 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. 185/2016 dated 18.11.2016 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 points raised in the Appeal grounds; She was all along under the control of the officers at the red channel and had not crossed the green Channel; Being a foreign national she was not aware of the Law; As she had worn the used gold jewelry the adjudicating authority should have allowed re-export; there is no previous offence registered against her and she is not a smuggler; Baggage rules will apply only if the goods were found in the baggage but the applicant was wearing the gold; The adjudication authority has straightaway confiscated the gold without exercising the option available under section 125 of the Customs Act, 1962; 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; This is the first time that she has brought gold.



5.2 The Applicant further pleaded that as per the case of Vigneswaran 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, further observing that only because of not declaring the gold, absolute confiscation is bad under law, as the only allegation is that she did not declare the gold.

5.3 The Revision Applicant cited various assorted judgments in support of his case and prayed for re-export of redemption fine and reduced 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 properly 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 Applicant has submitted that she was wearing the gold and this fact has not been disputed by the adjudicating authority. There are also no allegations of ingenious concealment by the department and in the order of the adjudicating Authority and therefore it is inferred that there was no ingeniously concealment. 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 weighing 586.13 grams valued at Rs. 17,47,254/- (Seventeen Lakhs Forty seven thousand Two hundred and Fifty four) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 6,00,000/- (Rupees Six lakhs) under section 125 of the Customs Act, 1962. Government observes that the penalty of Rs. 50,000/- imposed on the Applicant under section 112(a) of the Customs Act, 1962 is appropriate.

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*  
28/6/18

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

ORDER No. 474/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 28-06-2018

To,

Shri Fathima Ruzna  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High Court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

Copy to:

1. The Commissioner of Customs, Airport, 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*  
27/7/18

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

