



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. 373/172/B/16-RA

Date of Issue 24/07/2018

ORDER NO. 480/2018-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 : Smt. Meharaj Gani

Respondent : Commissioner of Customs(Airport), Cochin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. COC-CUSTOM-OOO-APP-25/2016-17 dated 13.05.2016 passed by the Commissioner of Customs (Appeals) Cochin.



ORDER

This revision application has been filed by Smt. Meharaj Gani (herein after referred to as the Applicant) against the order no COC-CUSTOM-OOO-APP-25/2016-17 dated 13.05.2016 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case is that the applicant arrived at the Cochin Airport on 06.12.2015. Examination of her person resulted in the recovery of one Gold chain, one bracelet, 5 bangles totally weighing 126.5 grams valued at Rs. 2,92,645/- ( Two lakhs Ninety two thousand Six hundred and forty five ).

3. The Original Adjudicating Authority vide Order-In-Original No. 271/2016 dated 06.12.2016 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. 30,000/- 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. COC-CUSTOM-OOO-APP-25/2016-17 dated 13.05.2016 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 applicant had worn the impugned gold on her person when she was intercepted; The gold was old and used for the past several months; Ownership of the gold is not disputed and there was no ingenious concealment; Goods must be prohibited before import or export mere non-declaration goods cannot become prohibited; She was intercepted at the scan area; there is no allegation that she passed through or crossed the Green channel, She was all along under the control of the officers at the red channel; Gold is not a prohibited item and according to liberalized policy gold can be released on payment of redemption fine and penalty;

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 Further, the Hon'ble High Court of Andhra Pradesh in the case of Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under



of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi-judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions.

5.4 The Revision Applicant cited various assorted judgments in support of her 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 was trying to pass through the green channel. The ownership of the gold is not disputed. There are also no allegations of ingenious concealment by the department and the order of the adjudicating Authority and therefore it is inferred that there was no ingeniously concealment. 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.

ADHUM NARAYANAR  
J.J. & NARAYANAR

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



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 126.5 grams valued at Rs. 2,92,645/- ( Two lakhs Ninety two thousand Six hundred and forty five ) is ordered to be redeemed for re-export on payment of redemption fine of Rs.1,30,000/- (Rupees One lakh thirty 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. 30,000/- (Rupees Thirty thousand ) to Rs. 25,000/- ( Rupees Twenty 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*  
28/6/18

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

ORDER No. 480/2018-CUS (SZ) /ASRA/MUMBAI DATED 28.06.2018

To,

Smt. Meharaj Gani  
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*  
24/7/18  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

