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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,

Mumbai-400 005

F.No. 373/238/B/16-RA /1040 Date of Issue 24/07/2018

ORDER NO.482/2018-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. Sithy Nooriya

Respondent : Commissioner of Customs(Airport), Chennai

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 297 & 298/2016 dated 23.09.2016 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Smt. Sithy Nooriya (herein after referred to as the Applicant) against the order C. Cus No. 297 & 298/2016 dated 23.09.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant a Sri Lankan citizen arrived at the Chennai Airport on 07.01.2016. Examination of her baggage and person resulted in the recovery of a gold chain and a gold bar totally weighing 214 grams valued at Rs. 5,53,404/- (Rupees Five lakhs Fifty three thousand and Four hundred and four), kept concealed in the inner wear worn by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 17/2016-17 AIRPORT dated 26.04.2016 ordered absolute confiscation of the impugned gold under Section 111 d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 55,000/- 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. 297 & 298/2016 dated 23.09.2016 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; There are no specific allegation that she passed through the Green channel; The adjudication authority has straightaway confiscated the gold without exercising the option available under section 125 of the Customs Act, 1962; The gold was not brought for any monetary consideration and the departments contention that it was received from some unknown persons is not based on any evidence; She was all along at the Red Channel under the control of the officers and did not pass through the Green channel; ; Being a foreign national she was not aware of the law; The gold was used and old and she had worn the chain and it was not concealed and hence the adjudicating authority should have allowed to re-export the gold; due to fear of arrest she had signed a computer generated statement and it was not voluntary; The eligibility question does not arise for a foreigner; The applicant submits that section (d), (l), (m) (n) & (o) are not applicable in the case, but mechanically applied.

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.

5.2 The Revision Applicant cited various assorted judgments in support of her case and also cited earlier orders of the Revisional Authority wherein gold was released on lesser fine and penalty and prayed for re-export of the gold on redemption fine and personal penalty and render justice.

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 recovered from her person and it was not ingeniously concealed. 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.

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 jewelry weighing 214 grams valued at Rs.

5,53,404/- (Rupees Five lakhs Fifty three thousand and Four hundred and four), is ordered to be redeemed for re-export on payment of redemption fine of Rs. 2,25,000/- (Rupees Two lakhs Twenty 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. 55,000/- (Rupees Fifty five thousand) to Rs. 45,000/- (Rupees Forty 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. 482/2018-CUS (SZ) /ASRA/Mumbai DATED 28.06.2018

To,

Smt. Sithy Nooriya
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, 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

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