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GOVERNMENT OF INDIA
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)
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Mumbai-400 005

F.No. 373/113/B/17-RA / 3346

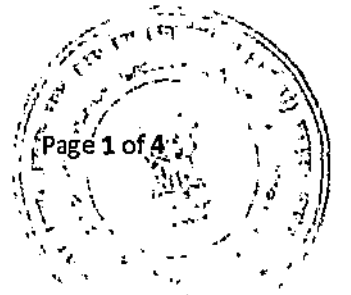
Date of Issue 20.07.2020

ORDER NO. 48/2020-CUS (SZ) / ASRA / MUMBAI/ DATED 19.05.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. LOURDHU MARY, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Smt. Lourdhu Mary

Respondent : Commissioner of Customs (Airport) Tiruchirapalli.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 58 & 59/2017 dated 20.06.2017 passed by the Commissioner of Customs (Appeals), Trichy.



can be considered as a declaration as per section 77 of the Customs Act, 1962; The Applicant has retracted her statement in her reply to the Show Cause notice; The gold jewelry was not brought for import but was supposed to be taken back to Malaysia, therefore the eligibility and requirement of foreign currency for customs duty are not relevant; Rule 3 of the tourist baggage allows personal jewelry; The import of gold is permitted and gold is not prohibited; The Appellate authority has failed to appreciate that there is a difference between absolute prohibition and restriction therefore absolute prohibition was not warranted.

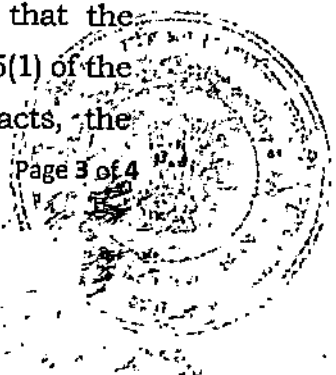
5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the absolute confiscation of the gold and release the gold on reasonable redemption fine and penalty for re-export in the interest of justice.

6. A personal hearing in the case was scheduled in the case, the Advocate for the Applicant Shri N. Manickam in his letter dated 29.10.2018 has stated that his applicants do not wish to be heard in person and in view of the same the Revision Application may be decided on merits.

7. The Government has gone through the facts of the case, The gold was not declared as required under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified.

8. However, the facts of the case reveal that the gold was worn on the neck hands and wrapped around the waist of the applicants under their trousers, and though concealed under their worn clothes it cannot be termed as ingeniously concealed. Import of gold is restricted not prohibited. The Applicant is a foreign citizen and has no past history of such misdemeanors. The ownership of the gold is not disputed. The Applicants claims to have made oral declaration of the gold. Thus the mere non-submission of the declaration cannot be held against the Applicant and dispossess her of the gold.

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 absolute confiscation of the gold is harsh and unjustified and therefore, a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold for re-export on payment of redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal is therefore modified as below.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 2102 grams valued at Rs. 55,40,374/- (Rupees Fifty five lakhs Forty thousand Three hundred and Seventy four) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 31,00,000/- (Rupees Thirty one lakhs) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty imposed of Rs. 5,00,000/- (Rupees Five lakhs) under section 112 of the Customs Act, 1962. The Penalty imposed is appropriate.

10. Revision application is allowed on above terms.

11. So, ordered.

(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 48/2020-CUS (WZ) /ASRA/MUMBAI

DATED 19.05.2020

To,

1. Smt. Lourdhu Mary, D/o Samicannoo, No. H. -5, Rumah Panjang, Bukit Kiara, Taman Tun Dr. Ismail, 60000, Kula Lumpur, W. Persekutuan (KL), Malaysia.

Copy to:

1. The Commissioner of Customs, SVPI Airport, Ahmedabad.
2. Shri N. Manickam, Advocate, C/o M. Ramesh, S/o Muthiah, Poongudi, Vellanur P.O., Kulathur Tk Pudukottai, Tamilnadu-622 501.
- 2 Sr. P.S. to AS (RA), Mumbai.
- 3 Guard File. ,
- 4 5. Spare Copy.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

