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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. 373/143&145 /B/14-RA / 1162

Date of Issue 15.2.2018

ORDER NO. ⁵⁰⁻⁵¹ /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 15.02.2018 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. Thamayanthi and Shri Alagappan

Respondent : Commissioner of Customs (Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 473-474/2014 dated 18.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

These revision applications have been filed by Smt. Thamayanthi and Shri Alagappan both Indian nationals (herein referred to as Applicants) against the order no 473 & 474/2014 dated 18.03.2014 passed by the Commissioner of Customs (Appeals), Chennai. As the Order in Appeal in respect of both these Applicants has been passed together and as both these Applicants are being represented by the same Advocate, The revision Applications are being addressed by this common order.

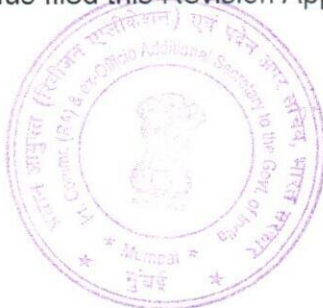
2. Briefly stated facts of the case are as follows, the applicants, arrived at the Chennai Airport and on arrival they were intercepted at the Green Channel while attempting to exit, without baggage declaration. Examination of their baggage and person resulted in the recovery of gold jewelry as detailed below;

Sl. No.	Applicants Name	Gold Jewelry recovered from the Applicants	
		Weight (in gms)	Value (in Rs.)
1	Smt. Thamayanthi	103.6	2,82,527/-
2	Shri Alagappan	170.2	404041

The Original Adjudicating Authority vide Order-In-Original Nos. 669 dated 09.06.2013 and 766/2013 dated 04.07.2013 ordered absolute confiscation of the impugned golds under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 29000/- on Smt. Thamayanthi and Rs. 40,000/- on Shri Alagappan under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by the said orders, the applicants filed appeal before the Commissioner (Appeals) praying for re-export of the impugned gold jewelry on payment of redemption fine and reduction of the personal penalty. The Commissioner (Appeals) vide Order-In-Appeal No. C.Cus No. 473 & 474/2014 dated 18.03.2014 rejected the appeal of the applicant.

4. The applicants have thus filed this Revision Application interalia on the following grounds that;



- 4.1. The order of the respondent is against law, weight of evidence and circumstances of the case.
- 4.2 both the Applicants were intercepted in the Arrival Hall well before they approached the green channel and when the Customs officers enquired they revealed the gold jewelry and informed that it was brought for personal use and not for monetary consideration.
- 4.3. when asked they both revealed the gold jewelry carried by them to the Customs officers and therefore there is no question of declaration. They were not aware that it was an offence to bring in gold jewelry and requested to be pardoned.
- 4.4 even assuming without admitting they had not declared the gold before the officers it is a technical fault and is pardonable. Secondly, CBEC Circular 09/2001 gives specific directions to the Customs officer that the declaration should not be blank, if not filled in by the passenger the officer will help them to fill the declaration card.
- 4.6 They did not pass through the green channel and were at the Red Channel all along under the control of the Customs Officers.
- 4.7 the Hon'ble Supreme Court (full bench) in the case of Om Prakash vs UOI states that the main object of the enactment of the said Act was the recovery of Excise Duties and not really to punish for infringement of its provisions. Hence the authority could have collected duty amount instead of imposing redemption fine and penalty.
- 4.7 sections 111 (d) (l) (m) and (o) are not attracted as no offence was committed. Moreover the personal penalty imposed was very high and unreasonable.

The Revision Applicants has also cited various assorted judgments in support of their case, and prayed for allowing re-export without redemption fine and penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar. The Advocate, re-iterated the submissions filed 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.

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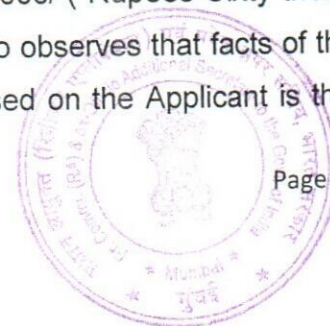


6. The Government has gone through the facts of the case. The facts of the case reveals that apart from the gold jewelry these passengers were wearing, they had also been carrying additional gold in their baggage. Therefore the Applicants have not made a proper declaration as required under Section 77 of the Customs Act, 1962 and had they were not intercepted before their exit , the Applicants would have taken out the gold bangles without payment of customs duty. Hence the confiscation of the gold in both the cases are justified.

7. However, the gold jewelry was not in commercial quantity for commercial consideration and from the facts of the case it appears that the Applicants were wearing part of the gold jewelry and the additional gold has been brought in to make jewelry for marriage etc. The facts of the case also state that the Applicant had not cleared the Green Channel exit. With regards to the declaration, the CBEC Circular 09/2001 gives specific instructions stating that, when the Disembarkation Card is not filled in by the passenger, the Customs Officer must ensure that, the oral declaration given by the passenger is recorded on the disembarkation card. Thus, mere non-submission of the declaration cannot be strictly held against the Applicants. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned gold is harsh and is not justified. As the applicant has requested for re-export of the confiscated gold, Government is inclined to accept the request. In view of the above mentioned observations, the Government also finds that a lenient view can be taken while imposing redemption fine and penalty upon the applicant. The order absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified and the confiscated gold is liable to be allowed for re-export on payment of redemption fine.

8. Taking into consideration the foregoing discussion, Government modifies the order of absolute confiscation of the impugned gold in both the cases and allows redemption of the confiscated gold for re-export in lieu of fine.

9. The gold jewelry totally weighing 103.6 gms valued at Rs. 2,82,527/- (Rupees Two Lacs, Eighty two thousand five hundred and twenty seven) brought by Smt. Thamayanthi is allowed for re-export on payment of redemption fine of Rs.60,000/- (Rupees Sixty thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore



reduced from Rs. 29,000/- (Rupees Twenty Nine thousand) to Rs.20,000/-(Rupees Twenty thousand) under section 112(a) of the Customs Act,1962.

10. The gold jewelry totally weighing 170.2 gms valued at Rs. 4,04,041/- (Rupees Four Lacs, Four thousand and forty one) brought by Shri Alagappan is allowed for re-export on payment of redemption fine of Rs. 80,000/- (Rupees Eighty Thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify slight reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 40,000/- (Rupees Forty Thousand) to Rs. 30,000/- (Rupees Thirty Thousand) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Appeal 473 - 474/2014 dated 18.03.2014 is modified as detailed above. Revision Application is partly allowed.

10. So, ordered.

Ashok Kumar Mehta
15.2.2018

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

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ORDER No. ⁵⁰⁻⁵¹ /2018-CUS (SZ) /ASRA/MUMBAI.

DATED 15.02.2018

To,

Smt. Thamayanthi and Shri Alagappan.
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

S. R. Hirulkar
15-2-18

एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.



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