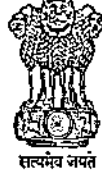


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F.No. 373/145,147 & 148/B/16-RA / 1845 Date of Issue 12/12/19

ORDER NO. ⁵²⁻⁵⁴ /2019-CUS (SZ)/ASRA/MUMBAI DATED 05.12.2019 OF
THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

Applicant : Smt. Sithy Wazeeda
Smt. M. M. Zameera
Smt. Fathima Rihana Mohamed

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.Cus-I
No. 276 to 278/2016 dated 31.10.2016 passed by the
Commissioner of Customs (Appeals), Bangalore.

ORDER

These three revision applications has been filed by Smt. Sithy Wazeeda, Smt. M. M. Zameera, Smt. Fathima Rihana Mohamed (herein after referred to as the Applicants) against the order in appeal No. 276 to 278/2016 dated 31.10.2016 passed by the Commissioner of Customs (Appeals), Bangalore. As all the three cases have been addressed vide one Appellate order, these Revision Applications are being decided together.

2. The officers of Customs intercepted the applicants, all three Sri Lankan Nationals, at the Kempegowda International Airport as they were attempting to pass through exit through the green channel. Examination of their person resulted in the recovery of assorted gold jewelry worn by the applicants. The Original Adjudicating Authority vide its Order-In-Original ordered absolute confiscation of the impugned gold under Section 111 (d) and (l) of the Customs Act, 1962, and imposed penalty under Section 112 (a) of the Customs Act, 1962 and under section 114AA of the Customs Act, 1962 in all the cases as detailed below.

Applicant Smt.	O-in-O & Date	Desc. Of Gold Jewelry	Nature of concealment	Qty.	Value	Penalty imposed u/s 112 (a) in Rs.	Penalty imposed u/s 114 AA in Rs.
M. M. Zameera	110/2014 30.04.14	1 chain, 4 gold bangles	Worn on person	242.97	6,86,390/-	70,000/-	35,000/-
Sithy Wazeeda	111/2014 02.05.14	1 chain, 2 bangles and 2 ear studs	Worn on person	167.77	4,73,950/-	48,000/-	24,000/-
Fathima Rihana Mohamed	112/2014 02.05.14	2 chains	Worn on person	159.85	4,51,576/-	46,000/-	23,000/-

3. Aggrieved by the said order, the applicants filed appeals before the Commissioner (Appeals) who vide a simultaneous order in appeal No. 276 to 278/2016 dated 31.10.2016 passed by the Commissioner of Customs (Appeals), allowed redemption of the gold on payment of redemption fine and

penalty for re-export as detailed below and set aside the penalty imposed under section 114 AA of the Customs Act, 1962.

Applicant Smt.	O-in-A & Date	Qty.	Value	Redemption Fine imposed u/s	Penalty imposed u/s 112 (a) in Rs.	Penalty imposed u/s 114 AA in Rs.
M. M. Zameera	110/2014 30.04.14	242.97	6,86,390/-	2,05,000/-	1,30,000/-	Set aside
Sithy Wazeeda	111/2014 02.05.14	167.77	4,73,950/-	1,42,000/-	90,000/-	Set aside
Fathima Rihana Mohamed	112/2014 02.05.14	159.85	4,51,576/-	1,35,000/-	90,000/-	Set aside

4. Aggrieved with the above order the Applicant, has filed this revision application interalia on the grounds that;

4.1 The order of the Commissioner (Appeals) is bad in law, opposed to facts and circumstances of the case; The Respondent has erred in arriving to a conclusion that the applicant had contravened the provisions of the Customs Act, 1962 and has passed the order on the basis of assumptions and presumptions; The proceedings were quasi judicial in nature and benefit of doubt should have been extended; The Respondent has erred in passing the order levying huge penalty and redemption fine; The gold jewelry was openly worn by the Applicants and could not have been presumed to be misdeclared by any stretch of imagination; The Applicants were foreigners and were not aware of the customs formalities and therefore a lenient view and allowed re-export with reasonable fine; The Applicants had no intention of selling the gold as alleged; The Applicants were intercepted even before they could declare the gold worn and their statements were not voluntary;

4.2 The Revision Applicants prayed for setting aside the order of penalty and redemption fine in the interest of justice and equity.

5. A personal hearings in the case were scheduled on 1.11.2018, 17/18.12.2018 and 03.10.2019. However neither the Applicants nor the Respondents appeared for the hearing, therefore the case is being decided *exparte* on merits.

6. 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 the confiscation of the gold is justified. However, it is observed that the gold is not in primary form and in the form of jewelry, amount of gold under import is small. The Applicants are all Sri Lankan nationals. The applicants were all wearing the gold and there are no allegations of ingenious concealment, neither is there any allegation that they were habitual offenders or any such previous offences or repeated visits to India. Under the circumstances, dispossessing them of the gold for these reasons will be an order in excess, and therefore absolute confiscation of the gold would be harsh and unjustified. Further, Government is of the opinion that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised mandatorily and this view has been repeatedly echoed in numerous judgements. The Appellate authority has rightly stated that the jewelry was worn by the Applicants and is 22 carat gold which is normal for people in this part of the world. Further, the jewelry is personal and not brought for commercial purposes. The Applicants are foreign nationals and therefore not supposed to be aware of the Custom formalities in India. Government is therefore inclined to take a lenient view in the matter.

7. The above facts justify a reduction in redemption fine and penalty. The impugned gold is allowed re-export on payment of redemption fine and penalty imposed, as below:

Applicant Smt.	O-in-A & Date	Qty.	Value	Redemption Fine imposed u/s	Penalty imposed u/s 112 (a) in Rs.	Penalty imposed u/s 114 AA in Rs.
M. M. Zameera	110/2014 30.04.14	242.97	6,86,390/-	90,000/-	68,000/-	Set aside
Sithy Wazeeda	111/2014 02.05.14	167.77	4,73,950/-	62,000/-	47,000/-	Set aside
Fathima Rihana Mohamed	112/2014 02.05.14	159.85	4,51,576/-	60,000/-	45,000/-	Set aside

8. The Appellate order is therefore modified as above, and the Revision Applications are accordingly disposed of on above terms.

9. So ordered.

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

52-54
ORDER No. /2019-CUS (SZ) /ASRA/

DATED 05.12.2019

To,

1. Smt. Sithy Wazeeda, W/o Mohamed Zarook, No. 78, Avalzavia, Colombo - 14, SRI LANKA.
2. Smt. M. M. Zameera, W/o Mohamed Eqbal, No. 215, Qure Road, Bawala, SRI LANKA.
3. Smt. Fathima Rihana Mohamed, No. 6/24, Albion Lane, Dematagoda, Colombo, SRI LANKA.

Copy to:

1. The Commissioner of Customs, Kempegowda International Airport, Bangalore.
2. Shri K.S. Rajan, Advocate, # 209, 16th Cross, Wilson Garden, Bangalore - 560 030.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.