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SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/135/B/14-RA / 1141

Date of Issue 31/07/2018.

ORDER NO. 521/2018-CUS (SZ)/ASRA/MUMBAI DATED 17.07.2018 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. Siyambalagaha Gedara Ismail Fawsul Rihana

Respondent : Commissioner of Customs, Cochin.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal COC-CUSTOM-000-APP-01-14-15 Dated 02.04.2014 passed by the Commissioner of C. Ex., Customs and Service Tax (Appeals), Cochin.



ORDER

This revision application has been filed by Smt. Siyambalagaha Gedara Ismail Fawsul Rihana (herein referred to as Applicant) against the order COC-CUSTM-000-APP-01-14-15 Dated 02.04.2014 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, a Sri Lankan National at the Cochin International Airport on 24.11.2013 as she was walking towards the exit. Examination of her person resulted in recovery of a gold chain and six bangles totally weighing 322.35 grams valued at Rs. 9,13,862/- (Rupees Nine Lakhs Thirteen thousand Eight hundred and Sixty two).

3. The Original Adjudicating Authority, vide order No. 369/24.11.13 dated 24.11.2013 absolutely confiscated the gold mentioned above under section 111(d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 18,000/- was imposed under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Cochin, vide his order No. COC-CUSTM-000-APP-01-14-15 Dated 02.04.2014 Commissioner (Appeals) rejected the Appeal.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

5.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Appeal was dismissed ex parte without giving any opportunity to the Applicant; The gold is old and used for several months and therefore the adjudication authority should have allowed re-export; Applicant never tried to cross the Green Channel, and there are no such specific allegations, the CCTV records if produced, can ascertain the facts; The Applicant was wearing the jewelry and she showed it to the officers, having seen the same the question of declaration does not arise; she was all along under the control of the officers at the Red channel; the Applicant is the owner of the gold and it was not brought for commercial purposes; that section 111 d, l, m, and o are not attracted in the case; Even assuming without admitting that she did not declare the gold it is just a technical fault.

5.2 The Applicant further pleaded that as per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 states that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not



declared; 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 the oral declaration; 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.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for allowing re-export and reduction of the redemption fine and reduce personal penalty and thus render justice.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. 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. The Applicant has claimed that he is eligible for concessional rate of duty, however the benefit would have been extended if he had declared the goods. Under the circumstances confiscation of the goods is justified.

8. However, the Applicant had not yet crossed the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant is not a frequent traveler and does not have any previous offences registered against her. Government, also observes that the applicant had worn the gold and there is no allegation of ingenious 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. The absolute confiscation is therefore unjustified.

9. Further, 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 and the Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be modified.



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and the confiscated goods are liable to be allowed for re-export on payment of redemption fine and penalty.

10. In view of the above, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned gold totally weighing 322.35 grams valued at Rs. 9,13,862/- (Rupees Nine Lakhs Thirteen thousand Eight hundred and Sixty two) is ordered to be redeemed for re-export on payment of redemption fine of Rs.3,25,000/- (Rupees Three Lakhs Twenty Five thousand) under section 125 of the Customs Act, 1962. Government observes that the penalty of Rs. 18,000/- (Rupees Eighteen thousand) imposed on the Applicant under section 112(a) of the Customs Act, 1962 is appropriate.

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
17.7.18

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

ORDER No.521/2018-CUS (SZ) /ASRA/MUMBAI.

DATED/7.07.2018

To,

Smt. Siyambalagaha Gedara Ismail Fawsul Rihana
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, Cochin.
2. The Commissioner (Appeals-II), Cochin.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

Sankarsan Munda
21/7/18

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

