

REGISTERED
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. 373/01/B/14-RA

Date of Issue 31/07/2018

ORDER NO. ⁵²⁷/2018-CUS (SZ)/ASRA/MUMBAI DATED 18.07.2018 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. Fareena

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
 Customs Act, 1962 against the Order-in-Appeal No. C. Cus
 No. 1620/2013 dated 25.11.2013 passed by the
 Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Fareena (herein referred to as Applicant) against the order 1620/2013 dated 25.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, at the Chennai International Airport on 02.02.2013. and examination of her person resulted in recovery of silver toe rings weighing 1890 gms and gold bangles weighing 42.2 grams both totally valued at Rs. 2,33,372/- (Rupees Two lakhs Thirty three thousand Three hundred and Seventy two).

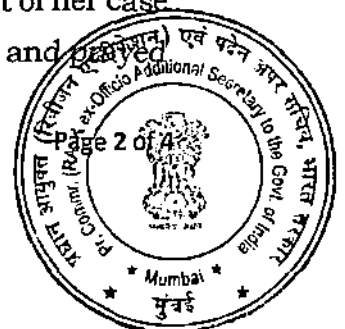
3. The Original Adjudicating Authority, vide order No. 133/2013- Batch A dated 02.02.2013 absolutely confiscated the jewelry mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 25,000/- 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) Chennai, Commissioner of Customs (Appeals) Chennai, vide his order No. 1620/2013 dated 25.11.2013 rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application interalia 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; Goods must be prohibited before import or export mere non declaration goods cannot become prohibited; there are no allegations that the Applicant tried to pass the Green channel; The Applicant had worn the gold and silver and it was not concealed and not ingeniously concealed; The gold and silver was old and used; Section 111 (d) (l), (m) and (o) are not applicable in the case; She was not aware of the Indian law; Even assuming without admitting that she did not declare the gold it is only a technical fault and it could have been pardoned.

5.2 The Revision Applicant cited various case laws in support of her case and pleaded for setting aside the order of absolute confiscation and



for allowing re-export and reduction of the personal penalty and thus render justice.

6. A personal hearing in the case was held on 05.07.2018, 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. A written declaration of gold and silver was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. The Government has gone through the case records it is observed that the adjudication order makes no mention of where the Applicant was intercepted. Therefore the applicant did not cross the green channel and was intercepted before she even attempted the same. The ownership of the goods is not disputed. There is no allegation of indigenous concealment. Absolute confiscation in such instances appears to be a harsh option, and unjustifiable. 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. The Applicant has pleaded for release of the goods for re-export on redemption fine and reduced penalty and the Government is inclined to accept the request. The impugned Order in Appeal therefore needs to be modified and the currency is liable to be allowed on payment of redemption fine and penalty.

Signature



10. In view of the above, Government allows redemption of the confiscated gold and silver for re-export in lieu of fine. The impugned gold and silver totally valued at Rs. 2,33,372/- (Rupees Two lakhs Thirty three thousand Three hundred and Seventy two) is ordered to be redeemed on payment of redemption fine of Rs. 75,000/- (Rupees Seventy 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. 25,000/- (Rupees Sixty thousand) to Rs. 15,000/- (Rupees Fifteen thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So, ordered.

(Signature)
18.7.18

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

ORDER No. 527/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 18.07.2018

To,

Smt. Fareena
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

ATTESTED

(Signature)
18/7/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Chennai
2. The Commissioner of Customs (Appeals), Chennai
3. Sr. P.S. to AS (RA), Mumbai.
- ✓ 4. Guard File.
5. Spare Copy.

