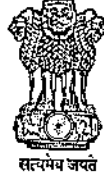


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/136/B/13-RA / 1147

Date of Issue 01/08/2018

ORDER NO. <sup>529</sup>1/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 20.07.2018 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. Jamilah Bee

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-I No. 1617/2013 dated 25.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Jamilah Bee (herein referred to as Applicant) against the order no 1617/2013 dated 25.11.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Singaporean national arrived at the Chennai Airport on 13.12.2012. She was intercepted at the Green channel and gold jewelry totally weighing 120 gms valued at Rs. 3,70,260/- ( Rupees Three lakhs Seventy thousand Two hundred and Sixty ). After due process of the law vide Order-In-Original No. 941/Batch C dated 13.12.2012 the Original Adjudicating Authority ordered confiscation of the impugned gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3), of Foreign Trade (Development & Regulation) Act. But allowed redemption of the goods for re-export on payment of Rs. 40,000/- and also imposed penalty of Rs. 10,000/- under Section 112 (a) of the Customs Act,1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1617/2013 dated 25.11.2013 rejected the appeal of the applicant.

3. The applicant has filed this Revision Application interalia on the following grounds that

3.1 The applicant has filed this Revision Application interalia on the following grounds; that the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The gold was brought for her personal use; the Applicant did not admittedly pass through the green channel. She was at the red channel all along at the arrival hall of Airport; that being a foreign national she was not aware of the law; the gold jewelry was worn by the Applicant and it was not for commercial trade; as the jewelry was worn by the Applicant and the same was visible and he showed it to the officer therefore the question of declaration does not arise; Good must be prohibited before export or import simply because of non-declaration goods cannot become prohibited; As she does not travel often she was not aware of the procedure; She is of Indian origin and fulfils all conditions for concessional rate of duty; As she was wearing the gold the officers should have allowed re-export; She is not a diehard smuggler and does not have any previous offence registered against her;

3.2 The Revision Applicant cited various assorted judgments and boards policies in support of re-export and in support of her case and prayed for



permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

5. 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 cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The gold was not declared by the passenger as required under Section 77 of the Customs Act, 1962, and under the circumstances confiscation of the goods is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The gold was worn by the applicant and it was not indigenously concealed. The ownership of the gold is not disputed. The Applicant is not a repeat offender and does not have any previous cases registered against her. 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, moreso because she is a foreigner.

8. 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. Government is of the opinion that a lenient view can be taken in the matter. Under the circumstances, the Original adjudication authority has rightly extended the option of redemption of the gold for re-export on payment of redemption fine and penalty. The Order-in-Appeal has also rightly upheld the order.

9. In conclusion, Government observes that the assorted gold jewelry totally weighing 120 gms valued at Rs. 3,70,260/- (Rupees Three lakhs Seventy thousand Two hundred and Sixty ) has been ordered is ordered for re-export, on payment of redemption fine of Rs. 40,000/- ( Rupees Forty thousand) under section 125 of the Customs Act, 1962. A penalty of Rs. 10,000/- has been imposed under section 112(a) of the Customs Act, 1962. Government observes that the redemption fine and penalty is also just, fair and appropriate and needs no intervention.



10. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 1617/2013 dated 25.11.2013 passed by the Commissioner of Customs (Appeals-I), Chennai, is upheld as legal and proper.

11. Revision application is accordingly dismissed

12. So, ordered.

*(Handwritten Signature)*  
23/7/18

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

ORDER No. <sup>529</sup>/2018-CUS (SZ) /ASRA/Mumbai, DATED 20-07-2018

To,

Smt. Jamilah Bee  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High Court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

Copy to:

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

**ATTESTED**

*(Handwritten Signature)*  
17/8/18

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

