



सत्यमेव जयते

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

F.No. 380/19/B/17-RA

Date of Issue 01/08/2018

ORDER NO. ⁵³⁷/2018-CUS (SZ)/ASRA/MUMBAI DATED 23.07.2018 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 :Commissioner of Customs, International Airport, Chennai.

Respondent :Kamleshwary

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. C. Cus I No. 68/2017 dated
04.04.2017 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by The Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order 68/2017 dated 04.04.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, a Sri Lankan national at the Anna International Airport on 03.11.2016, examination of her person resulted in recovery of gold ornaments totally weighing 263 grams valued at Rs. 7,36,042/- (Rupees Seven Lakhs Thirty six thousand and forty two).

3. The Original Adjudicating Authority, vide order No. 140/2016-17-AIRPORT dated 19.11.2016 confiscated the gold 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. But allowed redemption of the gold for re-export on payment of Rs. 1,00,000/- A Personal penalty of Rs. 70,000/- was imposed under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 5,000/- was also imposed under section 114AA of the Customs Act, 1962.

4. Aggrieved by this order the Respondent filed an appeal with the Commissioner of Customs (Appeals) Chennai, The Commissioner (Appeals) vide order in appeal No. 68/2017 dated 04.04.2017 set aside the confiscation and penalty in the Order in original with consequential benefits.

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 neither legal nor proper as the respondent had attempted to smuggle the gold by way of non-declaration knowing well that she was not an eligible to import gold; The respondent had a culpable mind to smuggle the gold without payment of duty and circumvent the restrictions and prohibitions; The respondent has not fulfilled the condition required under Notification No. 12/2012 and Baggage rules and hence ineligible to import gold; The Appellates order setting aside the confiscation is not acceptable; the order of the Appellate authority makes smuggling an attractive proposition.

5.2 The Revision Applicant prayed for setting aside the order of the Appellate authority or such an order as deemed fit.

6. In view of the above, the Respondent was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and according



hearing in the case was held on 06.07.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. In his written reply he interalia submitted that

6.1 The Applicant had worn the gold chain and when intercepted after the scan formalities, revealed the gold to the officers; the gold belonged to his family and The Applicant had purchased the gold from her own earnings; The respondent was wearing the gold alongwith thalli and rings (Gundu) and it was old and used; She was all long under the control of the officers at the red channel and there is no allegation that she tried to pass through the green channel; it is an admitted fact that there was no indigenous concealment; she was all long under the control of the officers at the red channel and there is no allegation that he did not pass through the green channel; Gold is not a prohibited item and can be released on payment of redemption fine and penalty; As per the Customs Act, duty is mandatory but the fine and penalty is not mandatory; The Hon'ble Supreme Court 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; ; In the case of Vigneswaran vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner, observing that only because of not declaring the gold, the absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold;

6.2 The respondent cited case laws in support of her case and prayed that the Revision application may be dismissed and render justice.

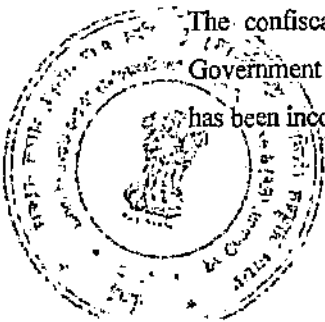
7. The Government has gone through the case records it is observed that the respondent did not cross the green channel. The ownership of the gold is not disputed. There is no indigenous concealment. However it is an undisputed fact that the Applicant had not made a written declaration of gold as required under Section 77 of the Customs Act, 1962. If the Respondent was not intercepted by the Custom officers the gold was not recovered, the respondent would have escaped payment of customs duty. Under the circumstances confiscation of the gold is mandatory. Government therefore holds that the order of confiscation in the Order in original deserves to be upheld and the setting aside of the confiscation and penalty in the Order in appeal needs to be set aside. Government also holds that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases.

ADWITI MARRAKMAS

10/07/2018

8. In conclusion, the Government therefore sets aside the Order-in-Appeal 68/2017 dated 04.04.2017 passed by the Commissioner of Customs (Appeals).

The confiscation and the redemption fine and penalty imposed in the Order in original is set aside. Government observes that the penalty of Rs. 5,000/- (Rupees Five thousand) under Section 114AA has been incorrectly imposed, the penalty is therefore set aside.



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9. Revision application is partly allowed on above terms.

10. So, ordered.


23.7.18
(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁵³⁷ /2018-CUS (SZ) /ASRA/ MUMBAI, DATED 23.07.2018

To,

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

ATTESTED



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

