



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. 380/65/B/16-RA / 1160

Date of Issue 02/08/2018

ORDER NO. ⁵³⁹/2018-CUS (SZ)/ASRA/MUMBAI DATED 24.07.2018 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, Chennai

Respondent : Smt. Meheraj Gani.

Subject : Revision Application filed, under Section 129DD of the

Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 872/2015 dated 23.12.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs, Chennai (herein referred to as Applicant) against the order 872/2015 dated 23.12.2015 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 16.10.2015 while passing through the green channel. Examination of her person resulted in recovery of two gold chains weighing 100 grams valued at Rs. 2,49,637/- (Rupees Two lakhs Forty nine thousand Six hundred and thirty seven) kept concealed with her used clothes.

3. The Original Adjudicating Authority, vide order No. 1155/2015- Batch B dated 16.10.2015 absolutely 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. 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. 872/2015 dated 23.12.2015, allowed redemption of the gold for re-export on payment of redemption fine of Rs. 75,000/- and partially modified the Appeal of the Applicant.

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 respondent is a frequent traveler and she concealed the goods to evade customs duty; She tried to pass through the green channel to avoid detection without making a true declaration, thus contravening the section 77 and 11 of the Customs Act, 1962; The said acts of the respondent rendered the gold liable for absolute confiscation; The respondent ineligible for concessional rate of duty; As the respondent had not filed a declaration the appellate authority's order allowing re-export is not in order; Board's circular No. 06/2014-Cus dated 06.03.2014 advises to be care ful to prevent misuse of facility for bringing gold; the order of the Appellate authority makes smuggling an attractive proposition.

5.2 The Revision Applicant prayed for setting aside the order of the 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 accordingly a personal 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 Respondent has never indulged in any offence under the Customs Act or FEMA; Redemption fine and penalty has already been paid and the gold has already been re-exported by the respondent; The ownership of the gold is undisputed; the gold was not ingeniously concealed and the two gold chains are not commercial quantity; goods must be prohibited before import or export merely because of non-declaration goods cannot become prohibited; After completing the immigration formalities the respondent had gone to the scan area where she was intercepted by the customs officers, on enquiry she revealed that she had brought two gold chains; there is no specific allegations that she tried to cross the Green channel, she was all along at the red channel and as she was intercepted at earlier after immigration there was no opportunity given to declare the gold; Gold is not a prohibited item and can be released on payment of redemption fine and penalty;

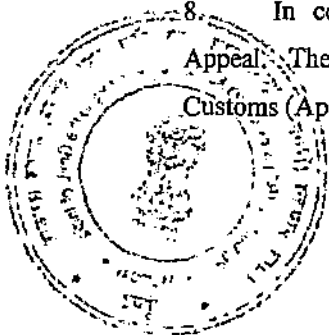
6.2 The respondent further pleaded that in the case of Vigneswaran vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner, observing that only because of not declaring the gold, the absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold; 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.

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

7. **INTERVISTA**

7. The Government has gone through the case records it is observed that the respondent did not cross the green channel and was intercepted before she even attempted the same. The ownership of the gold is not disputed. There is no allegation of indigenous concealment. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. 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. Under the circumstances, the Appellate authority has rightly extended the option of redemption of the gold on payment of redemption fine.

8. In conclusion, the Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 872/2015 dated 23.12.2015 passed by the Commissioner of Customs (Appeals-I), Chennai, is upheld as legal and proper.



9. Revision application is accordingly dismissed.
10. So, ordered.

Ashok Kumar Mehta
24.7.18

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

ORDER No. ⁵³⁹/2018-CUS (SZ)/ASRA/MUMBAI. DATED 24.07.2018

To,

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

ATTESTED

Sankarsan Munda
24/7/18

SANKARSAN MUNDA
Asst. Secy to Govt of India (C. & E.)

