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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. 373/26/B/17-RA

Date of Issue 02/08/2018

ORDER NO. ⁵⁴⁰ 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 : Smt. Kalyani Muthuiah

Respondent : Commissioner of Customs(Airport), Chennai.

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

Customs Act, 1962 against the Order-in-Appeal C.Cus INo. 23/2017 dated 25.01.2017 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Smt. Kalyani Muthuiah against the order no C.Cus INo. 23/2017 dated 25.01.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, a Sri Lankan national had arrived at the Chennai Airport on 19.10.2016. She was intercepted after she had submitted her declaration. Examination of her person resulted in recovery of assorted gold articles totally weighing 553.8 gms valued at Rs. 16,78,568/- (Rupees Sixteen Lacs Seventy eight thousand Five hundred and sixty eight). The Applicant had declared a gold chain weighing 326 grams which was detained for re-export. The original Adjudicating Authority vide his order in original 203/2016-17-AIRPORT dated 09.01.2017 absolutely confiscated the gold under section 111 (d), (l) and (m) of the Customs Act, 1962. A Penalty of Rs. 1,60,000/- under Section 112 (a) of the Customs Act, 1962 was imposed on the Applicant. A penalty of Rs. 10,000/- was also imposed under Section 114AA of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C. Cus I No. 23/2017 dated 25.01.2017 rejected the Appeal.

4. The applicant has filed this Revision Application inter alia on the following grounds that;

4.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The applicant submits that there was no ingenious concealment and the gold jewelry was not commercial quantity; The Applicant further submits that the four gold coins were attached to the Thalli which was as per Hindu rites, these were cut from the thalli and the thalli was returned; The Applicants child was also wearing a part of the gold alongwith the talismans which were also confiscated; there is no provision for absolute confiscation and option is available under section 125 of the Customs Act, 1962; The gold was purchased by her husband; The case relates to import whereas the Authority has imposed penalty under Section 114AA which relates to export of the goods; The Adjudication authority failed to understand the difference between complete prohibition and restrictions; The applicant was wearing the gold and the same can be seen through the naked eye and she showed it to the officers having seen the gold the question of declaration does not arise; She had worn the gold but the officers asked the Applicant to remove the gold and put it in a bag; Being a foreign national she was not aware of the law; she was all along at the red channel and did not pass through the green channel; The Applicant further pleaded that In the case of Vigneswaran vs UOI in W.P. 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;

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed that the Hon'ble Revisionary Authority allow re-export of the gold or release the gold on payment of redemption fine and personal penalty and thus render justice.

5. 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 cited the decisions of GOI/Tribunals where redemption fine and personal penalty was reduced and requested for the same. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. A written declaration of seized gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had she not been intercepted she would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, Government also observes that the ownership of the gold is not disputed. Most of the gold was worn by the Applicant and some by her child and hence the gold was not ingeniously concealed. The Applicant does not have any previous offences 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. Under the circumstances, Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export of the gold 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 and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty. Government also holds that no penalty is imposed under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold totally weighing 553.8 gm. valued at



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Rs. 16,78,568/- (Rupees Sixteen Lacs Seventy eight thousand Five hundred and sixty eight) is ordered to be redeemed for re-export on payment of redemption fine of Rs.6,00,000/- (Rupees Six lakhs) 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. 1,60,000/- (Rupees One lakh sixty thousand) to Rs.1,20,000/- (Rupees One lakh Twenty thousand) under section 112(a) of the Customs Act,1962. The penalty of Rs. 10,000/- (Rupees Ten thousand) under section 114AA has been incorrectly imposed, the penalty is therefore set aside..

9. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

10. So, ordered.

Ashok Kumar Mehta
24.7.18

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

ORDER No. ⁵⁴⁰/2018-CUS (SZ)/ASRA/MUMBAI DATED 24.07.2018

To,

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

ATTESTED

Sankarsan Munda
2/8/18

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

