

REGISTERED  
SPEED POST

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. 373/286/B/14-RA

Date of Issue 10/08/2018

ORDER NO. 585/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.07.2018 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. Wahida Banu

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. 992/2014 dated 20.06.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Wahida Banu (herein referred to as Applicant) against the Order in Appeal C. Cus No. 992/2014 dated 20.06.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen arrived at the Chennai Airport on 25.12.2013. She was intercepted and examination of her handbag resulted in the recovery of four gold bangles and a pendent 134 gms valued at Rs. 3,35,458/- (Rupees Three lakhs Thirty five thousand Four hundred and Fifty eight).

3. After due process of the law vide Order-In-Original No. 1528/2013 AIU B dated 25.12.2013 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 10,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 992/2014 dated 20.06.2014 rejected the appeal of the applicant.

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

4.1 The Commissioner (Appeals ) has passed the impugned orders without rightly appreciating the facts and circumstances of the case; The gold was being carried for someone else is incorrect, the applicant has not made any such statement; The Applicant had worn the gold and had not concealed the same; The absolute confiscation of the gold is untenable in law, the option to redeem the gold ought to have been given to the Applicant as it is mandatory under the section 125 of the Customs Act, 1962; Gold is a restricted item and not prohibited; Even assuming without conceding that the Applicant had caused the goods liable for confiscation, the applicant has a right to seek redemption of the goods, and the Commissioner should have given an option to redeem the same.

4.2 The Revision Applicant accordingly prayed that the Hon'ble Revision Authority may please set aside the order in Appeal and permit re-export of the gold in the interest of justice.



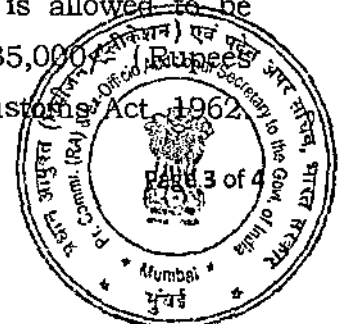
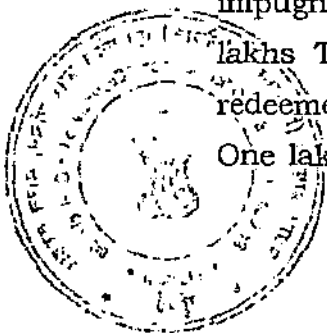
5. A personal hearing in the case was scheduled to be held on 23.07.2018, the Advocate for the respondent Shri G. Derrick Sam attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for setting aside the order in appeal and allow the revision application.

6. The Government has gone through the facts of the case. A written declaration of goods 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.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was kept in her handbag and it does not appear to have been indigenously concealed. Import of gold is restricted not prohibited. Even though the Applicant is a frequent traveler there are no 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, more so 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. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold for re-export on fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 134 gms and valued at Rs. 3,35,458/- (Rupees Three lakhs Thirty five thousand Four hundred and Fifty eight) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 1,35,000/- (Rupees One lakh Thirty 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. 10,000/- ( Rupees Ten thousand ) to Rs.8,000/- ( Rupees Eight thousand ) under section 112(a) of the Customs Act,1962.

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

11. So, ordered.

*(Handwritten Signature)*  
30/7/18

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

ORDER No. <sup>585</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.07.2018

To,

Smt. Wahida Banu  
c/o Shri G. Derrick Sam  
17, First Cross Street,  
Fourth Avenue,  
Besant Nagar,  
Chennai - 600 090.

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)*  
10.8.18

**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

