

373/386/B/14-RA

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

F.No. 373/386/B/14-RA

Date of Issue. 10/08/2018

ORDER NO. 594/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 02.07.2018 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. Kugeni Amaratheepan

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
No. 1686/2014 dated 11.09.2014 passed by the
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Kugeni Amaratheepan (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1686/2014 dated 11.09.2014 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 25.05.2014. He was intercepted at the green channel and he was found carrying a gold chain with five pendants totally weighing 185 gms valued at Rs. 4,71,424/- (Rupees Four Lakhs Seventy one thousand Four hundred and Twenty four).

3. After due process of the law vide Order-In-Original No. 709/2014 Batch B dated 25.05.2014 the Original Adjudicating Authority ordered 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. But allowed redemption of the gold for re-export on payment of a fine of Rs. 2,40,000/- and imposed penalty of Rs. 48,000/- 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. 1686/2014 dated 11.09.2014 rejected the appeal of the applicant.

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

4.1 The order of the authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles; The Applicant is a bonafide tourist who came along with her husband; The contention of the officers that she gold jewelry did not belong to her is far fetched as the gold seized is a thali kodi; The officers deliberately did not ascertain the gold through a certified goldsmith as done in other cases; The Applicant never concealed the gold and never intended to evade the payment of duty; The gold chain was worn around her neck; The adjudicating authority should have considered that gold is not a prohibited item and the applicant is a tourist; The Appellate authority has failed to consider that the Thalli Kodi is a personal jewelry and its import did not violate any provisions of baggage rules; A bangle or a necklace worn by the passenger cannot be considered a concealment if it is worn by a passenger; Considering the above submissions coupled with baggage rules the Applicant has a strong grounds for taking back her gold Thalli chain without imposing any conditions.



4.2 The Revision Applicant cited case laws in his defense and prayed for reduction of fine and penalty and passing such orders as deem fit and proper in the facts and circumstances of the case.

5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar 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 and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

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 worn by the Applicant and it was not indigenously concealed. Import of gold is restricted not prohibited. The Applicant had worn this the gold chain as a Thalli. 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 the Applicant 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 a lenient view can be taken in the matter. The Applicant has pleaded for release of the gold or reduction of the redemption 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 allows the gold to be redeemed for re-export. The redemption fine imposed on the impugned gold weighing 185 gms valued at Rs. 4,71,424/- (Rupees Four Lakhs Seventy one thousand Four hundred and Twenty four) is reduced from 2,40,000/- (Rupees Two lakhs Forty thousand) to Rs. 1,85,000/- (Rupees One lakh Eighty 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. 48,000/- (Rupees Forty eight



thousand) to Rs. 37,000/- (Rupees Thirty seven 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.

(Signature)
2.7.18

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

ORDER No. 594/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 02.07.2018

To,

Smt. Kugeni Amaratheepan
c/o M/s L. K. Associates
"Time Tower" Room No. 5, II Floor,
169/84, Gengu Reddy Road,
Egmore, Chennai- 600 008.

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

(Signature)
10/7/18

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

