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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. 380/56/B/15-RA

Date of Issue 14/08/2018

ORDER NO. 617/2018-CUS (SZ)/ASRA/MUMBAI DATED 31.07.2018 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. Nona Sukhan Jassim

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 609/2015-16 dated 29.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by The Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order 609/2015-16 dated 29.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

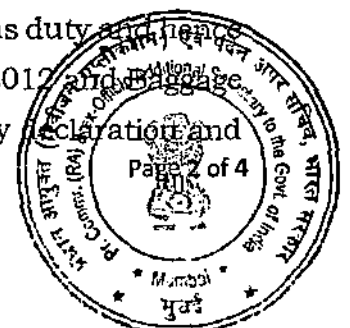
2. Briefly stated facts of the case are that the Officers of Customs intercepted the Smt. Nona Sukhan Jassim, is a Sri Lankan citizen, at the Chennai International Airport on 14.02.2015 while passing through the green channel. Examination of her person resulted in recovery of a gold chain and two gold bars totally weighing 274 grams valued at Rs. 7,79,319/- (Rupees Seven Lakhs Seventy Nine thousand Three hundred and Nineteen). The gold chain was worn by her and the gold bars were recovered from her hand baggage.

3. The Original Adjudicating Authority, vide order No. 74/2015-16-AIRPORT dated 23.05.2015 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 on payment of Rs. 2,75,000/- A Personal penalty of Rs. 50,000/- 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. 609/2015-16 dated 29.09.2015, dismissed the appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 Both the Order in original and the Order of the Commissioner (Appeals) is neither legal nor proper; the respondent had tried to smuggle the gold by not declaring knowing well she was not eligible to bring gold; The Respondent is a foreign citizen and has contravened the section 77 and 11 of the Customs Act, 1962 and therefore the gold is liable for absolute confiscation; The respondent did not have foreign currency for payment of customs duty and hence ineligible to import gold under Notification No. 12/2012 and Baggage rules; In this case the Respondent has not filed any declaration and



hence the order to allow re-export is not in order; The Appellate order upholding re-export is also erroneous; Gold is a restricted item and if still attempted to be smuggled it becomes prohibited and therefore should be confiscated absolutely.

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 25.07.2018, the Advocate for the respondent Shri K Mohamed Ismail in his written reply interalia submitted that

6.2 The Applicant is a Sri Lankan citizen had worn the gold chain; the gold bars was not concealed but kept in his pant pocket; The ownership of the gold has been established; There has been ingenious concealment and there is no past history of customs offence or violation The Commissioner(Appeals) has also upheld the order of the Original Adjudicating authority and has observed that there is no merit in the Appeal filed by the department. The Revisional Authority has order dated 09.08.2012 in F. No. 380/37-41/B/11-RA, order No. 283-287/2012 dated 31.03.2012 has rejected Revision Applications filed by the department as being devoid of merits and has confirmed the order of both the lower authorities for re-export of gold jewelry as the passengers were Sri Lankan nationals.

6.3 The respondent cited case laws in support of his case and prayed that the Revision application may be dismissed and confirm the orders of the lower authorities as there were no infirmities in the impugned orders and render justice.

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 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 unjustified. Further, there are a catena of judgments which align with the view of discretionary powers vested with the lower authorities under section 124A of the

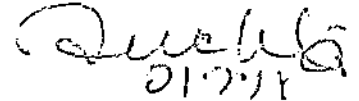


Customs Act, 1962 have to be exercised. Under the circumstances, the Original adjudication authority has rightly extended the option of redemption of the gold for re-export on payment of redemption fine and penalty. The Order-in-Appeal has also rightly upheld the order.

9. In conclusion, the Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 609/2015-16 dated 29.09.2015 passed by the Commissioner of Customs (Appeals-1), Chennai, is upheld as legal and proper.

10. Revision application is accordingly dismissed.

11. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No. 617/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.07.2018

To,

1. The Commissioner of Customs,
Custom House,
Rajaji Salai,
Chennai.
2. Smt. Nona Sukhan Jassim
K. Mohamed Ismail
Advocate
New No. 102 (old No. 271)
Linghi Chetty Street,
Chennai - 1.

ATTESTED



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

Copy to:

1. The Commissioner of Customs (Appeals), Chennai
2. Sr. P.S. to AS (RA), Mumbai.
- ~~3. Guard File.~~
4. Spare Copy.

