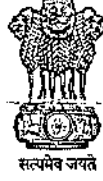


REGISTERED
SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/58/B/17-RA

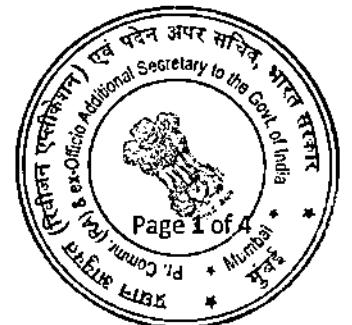
Date of Issue 27/08/2018

ORDER NO. 625/2018-CUS (SZ) / ASRA /-MUMBAI/ DATED 14.08.2018 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. Hajara Mariam Seyed

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. 35/2017 dated 20.02.2017 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Hajara Mariam Seyed (herein referred to as Applicant) against the Order in Appeal C. Cus No. 35/2017 dated 20.02.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 06.01.2016. She was intercepted and examination of her person resulted in the recovery of gold jewelry totally weighing 732.5 gms worn on her person and nine gold bars weighing 1048.5 were recovered from her undergarments. A total of 1781 gms valued at Rs. 46,05,666/- (Rupees Forty six lakhs Five thousand Six hundred and Sixty Six) was recovered from the applicant.

3. After due process of the law vide Order-In-Original No. 159/2016 dated 25.11.2016 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. 4,60,000/- under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 10,000/- was also imposed under Section 114AA 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. 35/2017 dated 20.02.2017 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 authority is wholly unreasonable, unjust, and arbitrary; The Applicant was intercepted near the baggage scan when going to collect her baggage; The applicants statement was not voluntary and a retraction letter was immediately and spontaneously issued; As she was intercepted near the hand scan area she was not given the opportunity to fill the declaration form and clear the gold on payment of Customs duty; The gold jewelry was worn by the Applicant gold bars were kept beneath her burkha and not concealed; She comes from a respectable family and is not a carrier for another person; The adjudication authority erred in ordering absolute confiscation and the gold should have been allowed for re-export as requested; Though satisfactory reasons were given for the cross examination of the officers and the mahazar witnesses it was not



W

acceded; The adjudicating authority failed to note that the applicant was prevented from declaring the goods to the proper officer; In many cases gold was released on payment of redemption fine and penalty.

4.2 The Revision Applicant cited case laws in her defense and prayed for setting aside the order of the Commissioner (Appeals) and release of the gold for re-export by passing such orders as deem fit in the interest of justice.

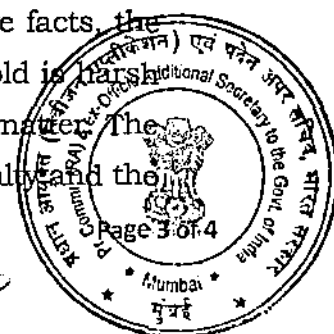
5. A personal hearing in the case was scheduled to be held on 24.07.2018, the Advocate for the respondent ShriM. Abdul Nazeer attended the hearing, he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed and 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 gold 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. Part of the impugned gold was worn by the Applicant and the rest recovered from her inner garments and it was not indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. 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.

As per (to be recommended) (to be)

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 on fine and penalty and the



Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified. Government also holds that no penalty is imposable under section 114AA of the Customs Act,1962 as this provision is not attracted in baggage cases.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 1781 gms valued at Rs. 46,05,666/- (Rupees Forty six lakhs Five thousand Six hundred and Sixty Six) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 20,00,000/- (Rupees Twenty 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 4,60,000/- (Rupees Four lakhs Sixty thousand) to Rs.4,00,000/- (Rupees Four lakhs) 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.

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

11. So, ordered.

(Handwritten Signature)
19/8/18

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

ORDER No. 625/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 14.08.2018

To,

Smt. Hajara Mariam Seyed
c/o M. Abdul Nazeer
No. 65, Beracah Road,
Varadamma Garden, 3rd Street,
Kil Pauk, Chennai 600 010.

Attested

(Handwritten Signature)

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

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.

