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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. 373/73/B/17-RA/1463 Date of Issue 04/09/2018

ORDER NO.648/2018-CUS (SZ)/ASRA/MUMBAI DATED 28 .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. Thallem Sunanda

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. 335 & 336/2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals -I), Chennai.

ORDER

This revision application has been filed by Smt. Thallem Sunanda (herein referred to as Applicant) against the order 335 & 336/2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, at the Chennai International Airport on 14.05.2016 and examination of her person resulted in recovery of two white colored pouch packets containing gold bits totally weighing 410 gms and totally valued at Rs. 12,48,040/- (Rupees Twelve lakhs Forty Eight thousand and Forty). The gold was recovered from her brassiere.

3. The Original Adjudicating Authority, vide order No. 97/2016-17-AIRPORT dated 17.09.2016 absolutely 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. A Personal penalty of Rs. 1,25,000/- 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. 335 & 336/2016 dated 28.10.2016 rejected the Appeal of the Applicant.

5. The applicant has filed this Revision Application alongwith a condonation of delay Application pleading that the delay in filing the Revision Application by 65 days may be condoned as the Applicant accompanies her husband on his trips abroad and could not contact the counsel for filing the revision application. The Revision Application has been filed interalia on the following grounds that;

5.1 The order of the Commissioner (Appeals) is against unjust, unfair, and unfounded and devoid of merits; The Applicant is not a trader and never attempted to clear the gold by misdeclaration; The gold was acquired by the applicants husband from his own income sources; The adjudicating authority has not considered entire facts before ordering absolute confiscation; The applicant is eligible for concessional duty having stayed abroad for 180 days; There are identical cases wherein the gold has been allowed on payment of customs duty; The appellate authorities should have

exercised the option available under section 125 of the Customs Act,1962; Gold is not a prohibited item and can be released on redemption fine and penalty;

5.2 The Revision Applicant cited various case laws in support of her case and pleaded for setting aside the order of absolute confiscation and prayed for allowing redemption fine and reduction of the personal penalty or any orders as deemed fit.

6. A personal hearing in the case was held on 09.08.2018, the Advocate for the respondent Shri B. Kumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the order in appeal be set aside and revision application be allowed. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. In the interest of justice, delay of 65 days is condoned and revision application is decided on merits. A written declaration of gold and silver 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.

8. The Government has gone through the case records it is observed that the ownership of the goods is not disputed. The gold was kept in her under garments and there is no allegation of indigenous concealment of the gold. There is no allegation that the applicant crossed the green channel. There are no previous offences against the applicant. Absolute confiscation in such instances appears to be a harsh option, and unjustifiable. Further, 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.

9. 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. The Applicant has pleaded for release of the goods on redemption fine and reduced penalty and the Government is inclined to accept the request. The impugned Order in Appeal therefore needs to be modified and the gold is liable to be allowed on payment of redemption fine and penalty.

10. In view of the above, Government sets aside absolute confiscation of the gold and allows redemption of the confiscated gold for re-export in lieu of fine. The impugned gold weighing 410 gms and totally valued at Rs. 12,48,040/- (Rupees Twelve lakhs Forty Eight thousand and Forty) is ordered to be redeemed on payment of redemption fine of Rs. 4,10,000/- (Rupees Four Lakhs Ten 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. 1,25,000/- (Rupees One lakh Twenty five thousand) to Rs. 1,02,000/- (Rupees One lakh Two 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.

28.6.18

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

ORDER No.648/2018-CUS (SZ) /ASRA/Mumbai DATED 28.06.2018

To,

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

ATTESTED

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

Copy to:

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