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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. 373/158/B/16-RA

Date of Issue 07.09.2018

ORDER NO. 657/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29.08.2018 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. Abhita Begum

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 138-142/2016 -TRY(CUS)dated 23.06.2016 passed by the Commissioner of Customs (Appeals-II), Trichy.



ORDER

This revision application has been filed by Smt. Abhita Begum (herein referred to as Applicant) against the Order in Appeal No. 138-142/2016 -TRY(CUS) dated 23.06.2016 passed by the Commissioner of Customs (Appeals-II), Trichy.

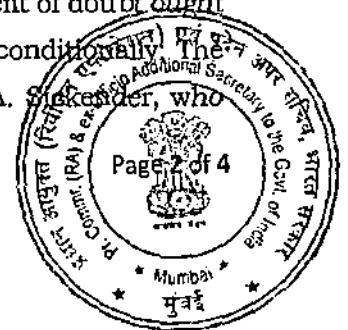
2. Briefly stated the facts of the case is that the officers of the Air Intelligence Unit, Trichy intercepted the Applicant on 16.01.2015. The Applicant was travelling from Chennai to Trichy on an International Flight as a domestic passenger. Examination of her baggage and person resulted in the recovery of gold chain and a gold bar weighing 179 grams valued at Rs. 4,91,366/- (Rupees Four lakhs Ninety one thousand and Three hundred and Sixty six). The gold was indigenously concealed in the cloth hair band worn by the Applicant. The gold was given to her on the flight to be carried to Trichy.

3. The Original Adjudicating Authority vide Order-In-Original No. 523/2015- dated 04.11.2015 ordered for absolute confiscation of the impugned gold under Section 111 (d), (i) and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 75,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner of Customs (Appeals-II), Trichy who vide Order-In-Appeal No. 138-142/2016 -TRY(CUS) dated 23.06.2016 rejected the appeal of the applicant.

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

5.1 The order of the appellate authority is unjust, unfair unreasonable biased and arbitrary; The passenger is a bonafide domestic passenger and has travelled from Chennai to Trichy; The gold was in the Applicants possession and did not contain any foreign markings; The Applicants have retracted their statements given before the customs officers and admitted to have carried the gold and jewelry for monetary consideration; The gold and jewelry was of Indian origin; The Applicant being a domestic passenger was seated in a separate bay for domestic passengers, they had a flying time of only 50 minutes and the flight was escorted by a Customs escort officer; The department failed to investigate the alleged handing of the gold inside the flight by examining on-duty customs officers; The declarations relied by the department without the signatures of the escort officer is against the principles of natural justice; As the passenger did not fall in the category of a person arriving from a foreign destination, the benefit of doubt ought to have been given and the gold should have been released unconditionally. The Applicant has produced a sworn affidavit given by a Shri T.S.A. Suresh, who

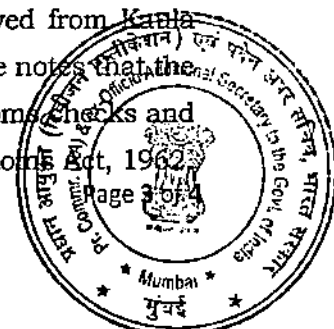


has claimed ownership of the gold; Domestic passengers who board international flights are not required to file a declaration form and baggage rules do not apply to them; The common knowledge of a certain modus operandi cannot give immunity to the department from discharging the legal burden of proving the case; The biased investigations should not have influenced the quasi judicial authority in absolutely confiscating the gold; Considering the totality of the case without any corroborative evidence the absolute confiscation of the gold and gold jewelry of Indian origin recovered from the domestic passengers is not legally tenable and the gold be released.

5.2 The Applicant submitted case laws in favor of his case and prayed for taking this memorandum of Appeal on record and pass such order as may be fit and proper in the facts and circumstances of the case.

6. A personal hearing in the case was scheduled to be 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 cited the decisions of GOI/Tribunals and pleaded that in view of the submissions 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 case records, it is observed that the gold was ingeniously concealed in the cloth hair band worn by the Applicant. For a domestic passenger this is unusual, as there is no necessity to hide gold for domestic passengers. Government further notes that the Applicant replied in the negative when questioned by the Customs officers whether she was carrying gold, again there was no need to do so. In their statements taken immediately after the detection/ interceptions the Applicant has admitted that the gold was delivered to them on board the flight, if the gold was of Indian origin where was the need to receive such gold on flight. The very fact that the gold was delivered on the flight is because it was handed over by an international passenger, a domestic passenger would have given her the gold before she boarded the flight. The retraction of their statements is therefore an afterthought submitted on legal advice to salvage the gold. Government also observes that there were five passengers similarly carrying a crude gold chain and a gold bar weighing approximately the same and all of them were intercepted on the same flight travelling from Chennai to Trichy. All five passengers concealed the gold in cloth hair bands. The adjudication authority has also rightly pointed out that the Applicant has not produced any documents for licit purchase of the gold in India. The Air India Express Flight No. IX 682 had arrived from Kuala Lumpur and was proceeding to Trichy via Chennai. Government therefore notes that the flight plan has been used to transfer gold on flight and circumvent Customs checks and smuggle the gold into India in contravention of the provisions of the Customs Act, 1962.



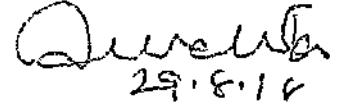
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The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and if she was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty.

8. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 75,000/- (Rupees Seventy Five thousand) on the Applicant. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. The Appellate order No. 138-142/2016 - TRY(CUS)dated 23.06.2016 passed by the Commissioner of Customs (Appeals-II), Trichy, is therefore upheld as legal and proper.

9. Revision application is accordingly dismissed.

10. So, ordered.


29.8.18

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

ORDER No. ⁶⁵⁷/2018-CUS (SZ) /ASRA/MUMBAI

DATED 29.08.2018

To,

Smt. Abhita Begum
c/o M/s B. 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, International Airport, Trichy.
2. The Commissioner of Customs (Appeals-II), Trichy.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED



SANKARSAN MUNDA
Addl. Commissioner of Custom & C. Ex.

