

REGISTERED  
SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 380/58/B/15-RA/3700

Date of Issue 31.08.2020

ORDER NO. 65/2020-CUS (SZ)/ASRA/MUMBAI DATED 26/5/2020 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, 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. Fathima Azmiyu

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus-I No. 421/2015 dated 27.08.2015 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 C.Cus-I No. 421/2015 dated 27.08.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

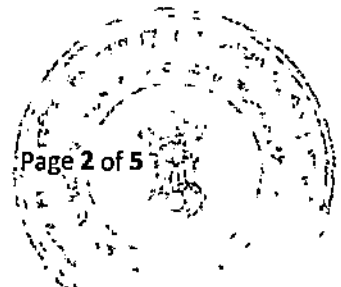
2. Briefly stated facts of the case are that on 24.12.2014 the Officers of Customs intercepted Smt. Fathima Azmiyu, a Sri Lankan National as she was walking towards the exit. A personal search resulted in the recovery of one pouch from her kurta worn by her, containing four gold bracelets weighing 407 grams totally valued at Rs. 10,29,083/- ( Rupees Ten lacs Twenty nine thousand and Eighty three ).

3. After due process of the law vide Order-In-Original No. 26/2015-16 dated 22.04.2015 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption of the same for re-export on payment of Rs. 3,50,000/- ( Rupees Three lacs Fifty thousand ) and imposed penalty of Rs. 1,00,000/- (Rupees One lac ) under Section 112 (a) and (b) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order 421/2015 dated 27.08.2015 rejected the appeal of the Applicant.

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

5.1 The passenger had filled up the value of the dutiable goods brought by her as 'Nil' in her Customs Declaration Card. Since the passenger had attempted to smuggle the said gold by not declaring the same and by way of concealing them and has neither declared nor was in possession of any valid permit or eligibility to bring the gold, the same were seized along with the material objects under Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation ) Act, 1992.



The gold bars were given to her by an unknown person with a direction to handover to a person outside Chennai for a monetary consideration of Rs. 10,000/-.

5.2 The eligibility of a passenger to clear the gold imported by her is covered under Notification No. 12/2012 CUS dated 17.03 2012 as amended. In the present case the passenger, Smt. Fathima Azmiya did not declare the gold possessed by her as required under Section 77 of the Customs Act, 1962.

5.3 Instead of ordering absolute confiscation, the respondent has been given re-export is not correct, especially when the passenger acted as carrier and when she was not the owner of the seized gold. Moreover the passenger is a Srilankan National and hence she is ineligible to import gold as per Notfn. 12/2012. The retraction cited by her advocate was after-thought and the same was made later on at the time of personal hearing. There is no evidence to prove that she give the statement under threat / coercion.

5.4 Accordingly, the Appellate Authority's order to release the goods who is not the owner of the goods is totally bad in law. Re-export of goods is covered in Section 80 of the Customs Act. As per the said Act, a true declaration has to be made under the section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India. In this case, the passenger has not filed any declaration and hence the Appellate Authority's order to allow the re-export of the gold is not in order.

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the impugned Order in Appeal be set aside and /or any other order as deemed fit.

6. In view of the above, a notice was sent to the respondent Smt. Fathima Azmiyu. The Applicant through her advocate has responded as under,

6.1 That she is a Sri Lankan National and has not committed any offence under the Customs Act, 1962.; That she was intercepted at the scan area; . That request for re-export the gold was not acceded to; That she is the owner



of the gold and there is no distinction between the owner and carrier of the goods under the Customs Act, 1962; That the passenger had received the gold from an unknown person is without any basis; Section 125 clearly states that where the owner of the goods is not known, give the goods to the person from whose possession such goods have been recovered. Being a foreigner the question of eligibility for import of gold at concessional rates does not arise; The gold was not concealed by the Respondent, and the department has not raised the plea before the adjudicating authority that the Respondent has concealed the gold; The Respondent submits that the suspicion however grave cannot take the place of lending evidence; The option for redemption is mandatory, however there is no provision for absolute confiscation under the Customs Act, 1962. The Respondent has been wearing the bracelets for several months;

6.2 The Respondent cited case laws in support of their contention and prayed that the Revision Application be summarily rejected and the impugned Order in Appeal be upheld and /or any other order as deemed fit

7. The Government has gone through the case records. The facts of the case reveal that the gold brace lets were recovered from a pouch recovered from the kurta worn by the Respondent. She was intercepted at the exit and there was no declaration made as required under section 77 of the Customs Act,1962. The Government therefore concludes there was no voluntary disclosure of the gold and that if the screening of the person had not taken place the impugned gold would not have been detected. Therefore the gold was liable for confiscation.


8. The Government however observes that Respondent is a Sri Lankan citizen. The Respondent has submitted that she was intercepted at the scan area. The gold bracelets were recovered from a pouch held in the pocket of the kurta worn by the respondent, therefore it cannot be termed as being ingeniously concealed. It is also a fact that Gold being valuable, is always carried in a concealed manner during travel. The import of gold is restricted not prohibited and there is no allegation of a past history of such misdemeanors. The respondent, being a foreigner, is not supposed to know Indian laws, therefore absolute confiscation of the gold would be a harsh decision. Further, there are a number 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 and the goods released on imposition of suitable redemption fine and penalty. Section 125 of the Customs Act, 1962, also allows the gold to be released to the person from whom the goods have been recovered. As the respondent is a foreigner the option extending re-export is also justified. The gravity of the offence has to be considered for punishment. The Government therefore observes that the Original adjudicating authority has rightly allowed redemption of the gold for re-export on payment of fine and penalty and the Appellate authority has rightly upheld the order. Under the circumstances the impugned Revision Application is liable to be dismissed.

10. Revision Application is accordingly dismissed.

11. So, ordered.

  
 ( SEEMA ARORA )  
 Principal Commissioner & ex-officio  
 Additional Secretary to Government of India

ORDER No. 65/2020-CUS (SZ) /ASRA/MUMBAI. DATED 24/5/2020.

To,

1. The Principal Commissioner of Customs (Airport),  
Anna International Airport, Meenambakkam, Chennai 600 027.
2. Smt. Smt. Fathima Azmiyu, D/o Thillainathan, No. 298/2, Modern  
Street. 10-15, Colombo Sri Lanka.

Copy to:

3. Shri o S. Palanikumar, Advocate, No. 10, Sunkurama Chetty Street, Opp High  
court, 2<sup>nd</sup> Floor, Chennai - 600 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

**ATTESTED**

**B. LOKANATHA REDDY**  
Deputy Commissioner (R.A.)

