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F.No. 380/08/B/15-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 31/1/18.

Order No. 67/18-Cus dated 27-4-2018 of the Government of India passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.CC(A)Cus/127/2015 dated 9.2.2015 passed by the Commissioner of Customs (Appeals), IGI Airport, New Delhi

Applicant : Commissioner of Custom, New Delhi

Respondent : Mrs. Anjali Dechsakphan New Delhi

ORDER

A Revision Application No.380/08/B/15-RA dated 10.04.2015 is filed by the Assistant Commissioner of Customs, IGI Airport, T-3, New Delhi, (hereinafter referred to as the applicant) against the Order-In-Appeal No.CC(A)Cus/Air/08/2014 dated 08.01.2015, passed by the Commissioner of Customs (Appeals), New Delhi, whereby the respondent, Mrs Anjali Dechsakphan, a Thai national, has been allowed to re-export confiscated gold weighing 270gms valued at Rs.6,87,35/- on payment of redemption fine of Rs.3,50,000/- and personal penalty of Rs.68000/-.

2. The brief facts of the case are that Mrs. Anjali Dechsakphan on arrival from Bangkok was intercepted at the exit of IGI Airport on 09.04.14 and 5 gold bangles worn by her were recovered from her. The Additional Commissioner of Customs confiscated the gold items absolutely and personal penalty of Rs.68000/- was imposed on her vide his Order dated 23.04.14. However, on an appeal of Mrs. Anjali Dechsakphan, the Commissioner (Appeals), vide above mentioned OIA, has modified the OIO by allowing Mrs. Anjali Dechsakphan to re-export the confiscated gold on payment of fine of Rs3,50,000/- and penalty of Rs.68000/-. Being aggrieved, the Revenue has filed the present revision application against the OIA.

3. The revision application has been filed mainly on the ground that the Commissioner (Appeals) has committed an error by allowing the respondent re-export of the confiscated gold items which were brought in India in gross violation of the provisions of Customs Act with ulterior motive and such re-export is not permissible under Section 80 of the Customs Act.

4. Personal hearing was earlier fixed on 9.3.18 in this case and it was availed by Shri Sanjay Kumar, ACO, on behalf of the applicant and he reiterated the ground of revision already pleaded in the revision application. Sh. S. C. Kamra, Advocate, representing the respondent, attended the personal hearing on 09/04/2018 and furnished written submissions to counter the revision application.

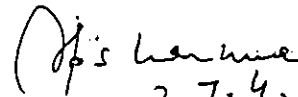
5. The matter is examined by the government and it is found that the respondent has raised a preliminary objection that the Government does not have jurisdiction in this matter as the gold articles worn by the respondent on her body cannot be considered as baggage and accordingly revision application filed by the revenue should be rejected on this ground alone. To support this claim, the respondent has placed reliance on the Hon'ble Kerala High Court's decision in the case of Vigneswaran Sethuraman Vs. Union of India 204(308) ELT 394 (Ker.). However, the Government is not impressed by this argument as the fact cannot be denied that the gold articles were brought by the respondent from Thailand on her body as passenger and, therefore, these goods were brought as baggage only. The respondent has misconstrued the scope of "baggage" as suitcase, bags or containers only in a narrow sense. Whereas the scope of baggage in the context of Chapter XI of the Customs Act, 1962, is much wider so as to cover all the goods carried by a person as a passenger irrespective of whether the goods are stuffed in a bag or in a body or worn on the body. If the goods worn on the body are kept outside the ambit of the term "baggage" as envisaged in Section 77, 78 and 79 of Customs Act etc as claimed by the respondent such goods will be regarded as cargo and all the provisions contained in the above mention Sections will become superfluous. Since the goods worn on a person's body cannot be considered as a cargo also, the term "baggage" more appropriately covers such goods. Therefore, the Government does not have any doubt that

the present revision application involves a dispute regarding baggage only and accordingly the revision application has been correctly filed before the Government. This view is also supported by the respondent's own action earlier in as much as the respondent never raised this objection in her appeal before the Commissioner (Appeals) and instead the appeal was filed considering the gold articles as baggage only. Instead, the respondent had specially raised a point in her appeal before Commissioner (Appeals) that goods were not covered in Annexure I of the Baggage Rules, 1998, and the adjudication authority has failed to appreciate Rule 6 and Rule 7 read with Appendix D, of the Baggage Rules. These provisions are relating to baggage only and thus it is manifest that the respondent has herself accepted that the goods were brought as baggage only. Therefore, her changed version that the gold articles brought by her are not covered by the term "baggage" is manifestly contradictory to her own earlier claim and the same cannot be allowed at this stage. This claim is further contradictory to her request of upholding the Order-in-Appeal allowing re-export of these gold articles in her written submission before the Government as re-export of goods under Section 80 can be allowed only in respect of a baggage. Thus by claiming that the Commissioner (Appeals) has correctly allowed the applicant to re-export the gold articles, the applicant has clearly accepted before the Government that it is a baggage matter and not cargo. The above referred Kerala High Court's decision is not applicable here because of above discussed divergent facts.

6 Coming to the issue whether the Commissioner (Appeals) has committed an error by allowing re-export of gold articles under Section 80 of Customs Act, the government does not find the revenue's case convincing as the respondent is undoubtedly a foreign national and the gold bangles brought by her are commonly used by the ladies. Section 80 of the Customs

Act provides the facility of re-exporting of goods at the request of the passenger while returning from India to foreign country. Thus, apart from declaration of the imported goods at the time of arrival of passenger, returning of the passenger to the foreign country after a short visit to India as a tourist or otherwise is a crucial condition for re-export of such goods. While it is true the applicant had not declared the gold bangles in writing at the time of her arrival at Delhi airport, it cannot be denied that she was wearing the same on her body and were visible as held by the Commissioner (Appeals). However, the crucial condition that she returned to Thailand after a short visit to India where she is settled permanently is fulfilled in this case and is not disputed by the revenue also. Moreover, such non-declarations by foreigners have been condoned in past by the Customs authorities in several cases. Considering these facts, the Government does not find any error in the order of the Commissioner (Appeals).

7. Accordingly, the revision application is rejected.


27.4.18

(R.P.Sharma)

Additional Secretary to the Government of India

Commissioner of Customs
IGI Airport Terminal-3,
New Delhi-110037

Order No. 67/18-Cus dated 27-4-2018

Copy to:

1. Mrs Anjali Dechsakphan C/o J-9/57 FF Rajouri Garden New Delhi 110027
2. Commissioner of Customs (Appeals), New Custom House, New Delhi
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

Rav
27/04/18

(Ravi Parkash)
OSD (Revision Application)