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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. 371/72/B/14-RA

Date of Issue 21.09.2018

ORDER NO.671/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 07.09.2018 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. Shamso Mohamed Hussein

Respondent : Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-335 & 336/14-15 DATED 19.09.2014 passed by the Commissioner of Customs (Appeals), Mumbai – III.



ORDER

This revision application has been filed by Smt. Shamsa Mohamed Hussein (herein referred to as Applicant) against the Order in Appeal MUM- CUSTM-PAX-APP-335 & 336/14-15 DATED 28.08.2014 passed by the Commissioner of Customs (Appeals), Mumbai - III.

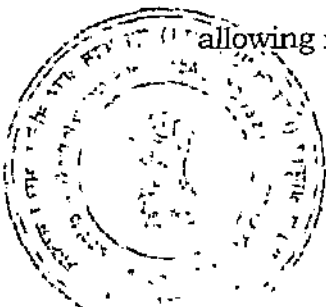
2. Briefly stated the facts of the case are that the applicant, arrived at the CSI Airport on 10.11.2014. She was intercepted and examination of her baggage resulted in the recovery of gold totally weighing 2045 gms valued at Rs. 46,05,835/- (Rupees Forty six lakhs Five thousand Eight hundred and Thirty five). The gold was recovered from her hand bag.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/86/2013-14 dated 26.02.2014 the Original Adjudicating Authority ordered 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. But allowed redemption of the gold on payment of Rs. 12,00,000/- and imposed penalty of Rs. 5,00,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the department filed an appeal before the Commissioner (Appeals) seeking re-export and reduction of fine and penalty. The Commissioner (Appeals) vide Order-In-Appeal MUM- CUSTM-PAX-APP-335 & 336/14-15 dated 28.08.2014 rejected the appeal.

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

5.1 The order of the authorities is bad in law, illegal, unjust and unfair; record; The Applicant requested for re-export as she was a Kenyan citizen and thus a foreign national and not a frequent traveler and not aware of Indian law; The gold was carried in her hand bag and not concealed in any manner; The gold brought by him was from his own shop in Dubai and is of 18 carats; The Applicant had pleaded that he was unable to pay customs duty of 36.05% and had requested for re-export; The rejection of re-export was totally unjustified and serves no purpose; There are several orders allowing re-export which have not been challenged by the department.



5.2 The Revision Applicant cited cases and case laws in support of her case and requested that the Honble Revisionary authority may be pleased to allow the revision application and allow re-export of the gold, and reduce the redemption fine and personal penalty and render justice.

6. A personal hearing in the case was scheduled to be held on 16.08.2018, the the Advocate for the respondent Shri N. J. Heera attended the hearing, she re-iterated the submissions filed in Revision Application and pleaded for re-export of gold and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. A written declaration of goods 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. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was carried in a handbag and it was not indigenously concealed. Import of gold is restricted not prohibited. There is no dispute regarding ownership of the gold. The Applicant is not a frequent traveler and there are no previous offences registered against the Applicant. 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 Original adjudicating authority has rightly allowed the release of the gold on payment of redemption fine and penalty and the Appellate Authority has rightly upheld the order..

DETERMINED The Applicant has pleaded that she is unable to pay the customs duty of 36.05% and therefore has pleaded that the gold be re-exported on reduced fine and penalty. Government observes that the redemption fine of Rs. 12,00,000/- is too low, and penalty of Rs. 5,00,000/- is sufficient on gold valued at 46,05,835/- (Rupees Forty six lakhs Five thousand Eight hundred and Thirty five) in case the Government allows the goods on redemption for re-export. The Government also observes that the Applicant is a foreign national and she is not a frequent traveler to India. Under the circumstances the Government is inclined to accept the order for re-export.



10. The Government, allows re-export of the gold, in case the applicant exercises the option to pay redemption fine of Rs. 21,00,000/- (Rupees Twenty one lakhs) and penalty of Rs. 5,00,000/- (Rupees Five lakhs).

11. The impugned Order in Appeal of the Commissioner (Appeals) is modified to the extant detailed above. Revision application is partly allowed on above terms.

12. So, ordered.

(Handwritten signature)
7.8.18

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

ORDER No. 671/2018-CUS (SZ) /ASRA/MUMBAI

DATED 07.08.2018

To,

Smt. Shamsu Mohamed Hussein
C/o Shri N. J. Heera, Advocate
Ground Floor, 41, Mint Road,
Opp GPO,
Fort, Mumbai-1.

Copy to:

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

ATTESTED

(Handwritten signature)
21.9.18

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

