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SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 373/245/B/15-RA/379

Date of Issue 12.10.2018

ORDER NO.688/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.08.2018 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. T. Geeta

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-I No. 343/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. T. Geetha (herein referred to as Applicant) against the Order in Appeal C. Cus No. 343/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 10.11.2014. She was intercepted and examination of her baggage and person resulted in the recovery of four gold kadas weighing 474 gms valued at Rs.11,47,218/- (Rupees Eleven lakhs Forty Seven thousand Two hundred and Eighteen). The para 1 of the order in original initially mentions that the gold kadas were worn by the Applicant. However, at the end of the para the order, giving reasons for the seizure states "*gold kadas are seized as they were being attempted to be smuggled by way of concealment in the rectum*". Over and above the sex of the Applicant also changes.

3. After due process of the law vide Order-In-Original No. 45/2015-16 - Airport dated 28.04.2015 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. 4,00,000/- and imposed penalty of Rs. 1,75,000/- under Section 112 (a) of the Customs Act,1962. The above stated miracle of concealing the gold kadas in the rectum and the sex change of the applicant again of finds a mention in the findings of the Order in Original.

4. Aggrieved by the said order, the department filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 343/2015 dated 29.06.2015 ordered absolute confiscation of the gold.

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

5.1 The order of the authorities is against the law weight of evidence and probabilities of the case. The orders cited by the Commissioner (Appeals) to justify the appeal of the department do not relate to the facts of this case; The learned Deputy Commissioner of Customs has appreciated the Revision Applicants plea that the statement given by her was immediately retracted; The revision petitioner has no history of customs offences or



violations; The gold kadas were worn by the Applicant; Gold is not prohibited but restricted; The order of the Deputy Commissioner of Customs is a well-considered order and the same has been passed on facts; The gold jewelry is not in commercial quantity; The revision Applicant has not brought any other items.

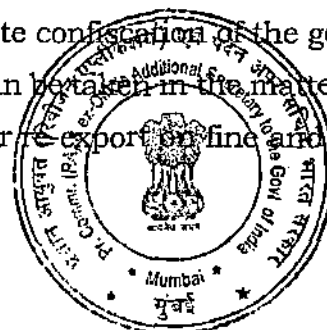
5.2 The Revision Applicant prayed that the Honble Revisionary authority may be pleased to allow the revision application and allow re-export of the gold , set aside the personal penalty and render justice.

6. A personal hearing in the case was scheduled to be held on 05.07.2018, the Revision applicant Smt. T. Geetha herself attended the hearing, she reiterated 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 kadas were worn by the Applicant and it was not indigenously concealed. Import of gold is restricted not prohibited. There is no dispute regarding ownership of the gold. There are no previous offences registered against the Applicant. 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. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold for re-export on fine and penalty and the

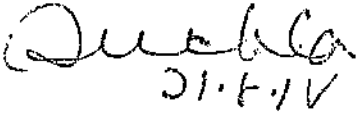


Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

10. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 474 gms valued at Rs.11,47,218/- (Rupees Eleven lakhs Forty Seven thousand Two hundred and Eighteen) is allowed to be redeemed for re-export on payment of redemption fine of Rs.5,00,000/- (Rupees Five lakhs) 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. 1,75,000/- (Rupees One lakh Seventy Five thousand) to Rs. 1,00,000/- (Rupees One lakh) under section 112(a) of the Customs Act,1962.

11. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

12. So, ordered.


31.1.18

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

ORDER No. 668/2018-CUS (SZ) /ASRA/110418AH

DATED 31.01.2018

To,

Smt. T. Geetha
Balakrishna Street,
Venkampakam Village,
Post Thirukazhukundram Taluk.,
Kancheepuram District – 603 102.

Copy to:

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

ATTESTED


12/10/18

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

