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. 373/29/B/15-RA/822 Date of Issue 12.10.2018

ORDER NO.695/2018-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. Hasmath Nazeera

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. 1691/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Smt. Hasmath Nazeera (herein referred to as Applicant) against the Order in Appeal C. Cus No. 1691/2014 dated 12.09.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 25.05.2014. She was intercepted and examination of her person resulted in the recovery of two gold bangles totally weighing 141 gms valued at Rs. 3,59,302/- (Rupees Three lakhs Fifty Nine thousand Three hundred and Two).

3. After due process of the law vide Order-In-Original No. 711/2014 -Batch A dated 25.05.2014 the Original Adjudicating Authority ordered absolute 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 and imposed penalty of Rs. 36,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1691/2014 dated 12.09.2014 rejected the appeal of the Applicant.

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

4.1 The order of the authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles; The Appellate authority has gone on a tangent as the order is purely based on the involuntrary statement of the Applicant without any corroborative evidence to substantiate the said order; The gold bangles were for personal use given to her by her father as seedhna at the time of her marriage and therefore the authorities have erred in ordering absolute confiscation and therefore the gold should be allowed re-export; The option to redeem the gold ought to have been given to the Applicant as it is mandatory under the section 125 of the Customs Act,1962; The gold brought in reasonable quantities was not a prohibited item; The Applicant was actually detained at the metal detector before getting an opportunity to declare the gold; The statement extracted was involuntary; The section 125 of the Customs Act, 1962 allows

the goods to be released to the person from whose possession the gold has been recovered; the lower authorities contention that the gold was brought for monetary consideration is purely speculative;

4.2 The Revision Applicant cited case laws in his defense and prayed for release of the gold unconditionally by passing such orders as deem fit in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 27.08.2018, the Advocate for the respondent Shri N. Balaji attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for re-export and setting aside the order in appeal and allow the revision application.

6. The Government has gone through the facts of the case. A written declaration of gold 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.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was worn by the Applicant and it was not indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. 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.

8. 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.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 141 gms valued at Rs. 3,59,302/- (Rupees Three lakhs Fifty Nine thousand Three hundred and Two) is allowed to be redeemed for re-export on payment of redemption fine of Rs.1,50,000/- (Rupees One lakh Fifty thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty imposed. The penalty of Rs. 36,000/- (Rupees Thirty six thousand) is reduced to Rs.30,000/- (Rupees Thirty thousand) imposed on the Applicant under section 112(a) of the Customs Act,1962 is appropriate.

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

11. So, ordered.

31.8.18

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

ORDER No. 695/2018-CUS (SZ) /ASRA/MUMBAI DATED 31.08.2018

To,

Smt. Hasmath Nazeera
c/o c/o Shri N. Balaji, Advocate.
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ATTESTED

12/10/18

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

Copy to:

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