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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. 373/114/B/14-RA/1272

Date of Issue 09.03.2018

ORDER NO. 82/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.02.2018 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. Lettisia Nirmala

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 No. 1803/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.



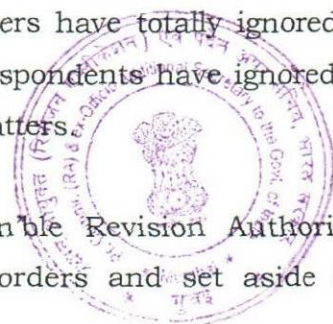
ORDER

This revision application has been filed by Smt. Lettisia Nirmala (herein referred to as Applicant) against the order no 1803/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai. The applicant has filed the application for condonation of claiming a delay of 20 days which has come up for hearing along with the Revision Application. The Advocate for the Revision Applicant has submitted that on receipt of the Appellate Order the same was immediately handed over to her counsel for preparing the Revision Application. However due to a case file mixup in the counsel's office the same could not be prepared and filed on time. Be that as it may, Government observes that the delay has not occurred due to a lapse on the part of the Revision Applicant, if the delay is not condoned the Revision Applicant will be put to an irreparable loss. In the interest of justice the Government is therefore inclined to condone the delay. In view of the above the Government condones the delay and proceeds to decide the Revision Application on Merits:

2. Briefly stated the facts of the case are that the applicant, a Sri Lankan citizen arrived at the Chennai Airport on 18.03.2013. Examination of her baggage and person resulted in the recovery of a two gold bangles and one gold ring totally weighing 94.8 gms totally valued at Rs. 2,69,777/-. After due process of the law vide Order-In-Original No. 288 Batch A dated 18.03.2013 Original Adjudicating Authority allowed re-export of the gold bangles on payment of a fine of Rs. 1,35,000/- and also imposed penalty of Rs. 27,000/- under Section 112 (a) the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C.Cus No. 1803/2013 dated 05.12.2013 rejected the appeal of the applicant.

4. The applicant has filed this Revision Application inter alia on the following grounds that; that the order of the appellate authority is bad in law, weight of evidence and probabilities of the case; that both the Respondents failed to see that a true declaration was made by the Applicant and nothing was concealed or misdeclared; that the value of the gold bangles adopted is on the higher side; that both the Respondents failed to see that the Applicant had opted for the Red Channel proving her bonafides that she has got dutiable goods. However the officers have totally ignored this and registered a case against the Applicant; Both the Respondents have ignored orders of the High Court and Government of India in similar matters.

The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and set aside fine of Rs.



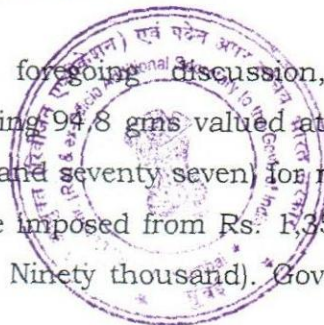
1,35,000/- and penalty of Rs. 27,000/-, and order for re-export of the gold bangles and thereby render justice.

5. A personal hearing in the case was scheduled to be held on 14.02.2018, the Advocate for the respondent Shri K. Mohammed Ismail in his letter dated 12.02.2018 informed that his clients are unable to send their counsel all the way to Mumbai from Chennai and requested that the personal hearing may be waived and the grounds of the Revision Application may be taken as arguments for this Revision, and decide the cases as per relief sought for in the prayer of the Revision and oblige. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, she must face the consequences. The Applicant is a frequent traveller and a written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had she not been intercepted she would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that this is the first offence of the Applicant. There was no ingenious concealment of the gold, and neither was there a concerted attempt at smuggling these goods into India. The gold jewelry brought by the Applicant also appears to be personal jewelry. There is no allegation of the gold being brought for third person for monetary consideration. 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 more so because she is a foreigner. Under the circumstances Government, holds that while imposing redemption fine and penalty the applicant can still be treated with a lenient view. The impugned order in Appeal is therefore liable to be modified.

8. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold weighing 94.8 gms valued at Rs., 2,69,777/- (Two lacs Sixty nine thousand Seven hundred and seventy seven) for re-export in lieu of fine. Government, reduces the redemption fine imposed from Rs. 1,35,000/- (One lac thirty five thousand) to Rs...90,000/- (Rupees Ninety thousand). Government also observes



that the facts of the case justify slight reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 27,000/- (Rupees Twenty seven thousand) to Rs. Twenty five (Rupees Twenty five thousand) under section 112(a) of the Customs Act,1962.

9. The impugned Order in Appeal stands modified to that extent.
10. Revision application is partly allowed on above terms.
11. So, ordered.

Ashok Kumar Mehta
28.2.18

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

ORDER No. 82/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.02.2018

To,

Smt. Lettisia Nirmala.
C/o K. Mohamed Ismail, B.A.B.L.,
Advocate and Notary Public,
New 102, Linghi Chetty Street,
Chennai – 600 001.

True Copy Attested

Sankarjan Munda
SANKARJAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

