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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F.No. 373/107/B/2018-RA / 2158

Date of Issue 29.11.2018

ORDER NO. 838/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 24.09.2018 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. G. K. Shanmuga Priya

Respondent : Commissioner of Customs, Tiruchirapally.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.69/2018-TRY (Cus) dated 10.04.2018 passed by the Commissioner of Cus. & C. Ex (Appeals), Tiruchirapally.



ORDER

This revision application has been filed by Smt. G. K. Shanmuga Priya (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. . 69/2018-TRY dated 10.04.2018 passed by the Commissioner of Cus. & C. Ex (Appeals), Trichirapally..

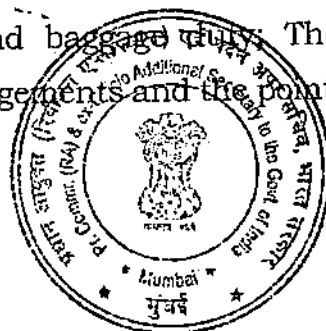
2. Briefly stated the facts of the case are that on the basis of specific intelligence the Officers of DRI identified 7 persons on their arrival from Kuala Lumpur to Trichy Airport on 18.08.2016. On rummaging the aircraft the officers recovered six packets of gold in primary form totally weighing 1047.9 grams, examination of each the 6 Applicants resulted in the recovery of 1791.8 grams of gold in primary form. Examination of the Applicant one of the 7 persons resulted in the recovery of assorted gold ornaments weighing 1147.200 gms valued at Rs. 35,48,652/- (Rupees Thirty five lakhs Forty Eight thousand and Six hundred and Fifty two).

3. After due process of the law vide Order-In-Original No. TCP-CUS-PRV-JTC-007-17 dated 28.09.2017 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,1992 and imposed penalty of Rs. 7,20,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) application who vide Order-In-Appeal No. 57/2018-TRY dated 13.03.2018 reduced the penalty to Rs. 3,50,000/- and rejected the rest of the Appeal of the Applicant.

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

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Gold is not a prohibited item and in a liberalized era it can be released on payment of redemption fine and baggage duty; The Appellate authority has simply glossed over the judgements and the points raised in the appeal grounds and



reason has been given to reject the Appeal; The ownership of the gold is not disputed and there is no ingenious concealment; Gold is a restricted item and not prohibited goods; The adjudication authority has not exercised the option of section 125 of the Customs Act, 1962 and simply proceeded to confiscate the gold; One of the gold bangle was old and the applicant had worn the same at the time of leaving India, she had informed the officers of the same but it was not considered; Part of the gold of 800 grams was procured by her through her own funds and jewelry was made of the same, but this was also not considered; The Applicant was under the control of the officers from the Airway bridge itself, and she was all along at the red channel and did not attempt to go to the green channel; The Applicants statement also reveals this fact and yet it is alleged that there was no declaration; Department has made no efforts to find out the receiver of the gold; Suspicion however grave cannot take the place of evidence; The Applicant states that she is not aware of the other co-noticees but the authorities have issue a combined SCN causing confusion; The Applicant further pleaded that as per the judgement by CEGAT South Zonal Bench, Chennai in the case of Shaikh Shahabuddin vs Commissioner of Customs Chennai has held that absolute confiscation without giving the option of redemption for gold concealed in shaving cream tubes is not proper, and the case was remanded for denovo adjudication; In the case of Peringatil Hamza vs Commissioner of Customs , Mumbai 2014 (309) E.L.T. 259( Tri- Mumbai in the seizure of Rs. 24 lakhs of currency the redemption fine of 10% and penalty of Rupees 2 lakhs was found appropriate.

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export of the gold on payment of nominal redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.



7. The Government has gone through the case records it observed that the seizure in this case was on the basis of specific intelligence of the Officers of DRI. The rummaging of the aircraft has resulted in the recovery six packets of gold in primary form totally weighing 1047.9 grams, examination of each the 6 Applicants resulted in the recovery of 1791.8 grams of gold in primary form. The Applicants examination resulted in the recovery of 1147.200 gms of gold jewelry valued at Rs. 35,48,652/- (Rupees Thirty five lakhs Forty Eight thousand and Six hundred and Fifty two). The Applicant in her statements has admitted to being a part of smuggling plan so as to smuggle gold into the country. The Applicant has admitted that the gold was given to her by one Shri Mani and his uncle Shri Shanmugam to be handed over to his mother in India, for which she would be monetarily compensated. It is evident that the applicant intercepted in the above operation is a carrier and not the owners of the smuggled gold, who used to frequently visit Kuala Lumpur and indulge in smuggling activity for monetary gains. The Applicants assertions that she had purchased the gold from Kuala Lumpur appears to be an after thought attempted to gain the release of the gold. Further, the Applicant is a frequent traveler and is fully aware of the Customs laws and procedure. In her statement she has also admitted to smuggling of gold in her previous visits abroad. In view of the above, it is clear that there was no intention on her part of declaring the confiscated gold to the authorities and if it was not intercepted, the gold would not suffer payment of customs duty and would entail monetary gains to her. There is no doubt about the fact that the provisions of Customs Act, 1962 has been contravened by her in this process and therefore, the seized gold is liable for absolute confiscation. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds that the impugned gold has been rightly confiscated absolutely so as to deter such passengers from such activities in the future. Hence the Revision Application is liable to be rejected.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 69/2018-TRY dated 10.04.2018 passed by the Commissioner of Cus. & C. Ex (Appeals), Tiruchirapally is upheld as legal and proper.



9. Revision Application is dismissed.

10. So, ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 838/2018-CUS (SZ) /ASRA/

DATED 24.10.2018

To,

Shri G. K. Shanmuga Priya  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

Copy to:

1. The Commissioner of Customs, Tiruchirapally.
2. The Commissioner of Customs CGST & C. Ex (Appeals), Trichirapally.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

