

REGISTERED 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. 371/137/B/2018-RA

Date of Issue 22.11.2018

F. No. 371/138/B/2018-RA/1983

ORDER NO. ⁸⁵⁵852/2018-CUS (WZ)/ASRA/MUMBAI DATED 31.10.2018 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 : Shri Meekrout Montree & Smt. Supawadee Kositsmith

Respondent : Commissioner of Customs, Airport, Mumbai.

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-956&957/17-18 dated
23.01.2018 passed by the Commissioner of
Customs(Appeals), Mumbai-III.



ORDER

This revision application has been filed by Shri Meekrout Montree and Smt. Supawadee Kositsmith (hereinafter referred to as the "applicants") against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-956&957/17-18 dated 23.01.2018 passed by the Commissioner of Customs(Appeals), Mumbai-III.

2. Briefly stated, the facts of the case are that Customs Officers had on suspicion intercepted two Thai nationals Smt. Supawadee Kositsmith and Shri Meekrout Montree(hereinafter referred to as the "applicants") at the exit gate of the arrival hall. These two persons had arrived from Bangkok and had walked through the green channel. It was found in the Customs Declaration Form that both of them had declared that the value of dutiable goods carried by them as NIL in the Customs Gate Pass. On detailed examination of their person, both applicants were found to be wearing kada and chain made up of crude gold which had been covered under full sleeves and closed neck shirt. It was found that collectively the gold weighed 1210 gms and was valued at Rs. 31,70,781/-(Rupees Thirty One Lakh Seventy Thousand Seven Hundred Eighty One Only). Consequently the impugned gold was confiscated absolutely under Section 111(d), (l) & (m) and both applicants were penalised under Section 112(a) and (b) of the Customs Act, 1962 with penalty of Rs. 3,00,000/- (Rupees Three Lakhs Only) imposed on each of them.

3. Aggrieved by the adjudication order, the applicants filed appeal before the Commissioner(Appeals) on the grounds that the impugned gold under seizure was neither crude gold nor jewellery in crude form but actually jewellery in its normal form; that the jewellery was not of 24 karat purity as the gold was of purity less than 99.95%; that they were tourists eligible to import personal jewellery; that there was no concealment; that the applicants were not involved in smuggling; that the impugned goods were not dutiable goods as dutiable goods meant goods which are chargeable to duty and on which duty has not been paid; that absolute confiscation was illegal and invalid as the jewellery seized was not prohibited goods and that the



applicants claim ownership of the seized goods. The applicants also requested for re-shipment of the gold jewellery and dropping of further proceedings.

4.1 On taking up the case for decision, the Commissioner(Appeals) found that there was no dispute that the impugned gold had been recovered from the applicants near the exit gate and that the impugned gold was in the form of kadas and chains and worn by the applicants. The applicants had not declared the impugned gold to customs. Moreover, in the customs declaration form the applicants had declared the value of the dutiable goods carried by them as NIL.

4.2 The Commissioner(Appeals) found that the main contention of the applicants was that the impugned gold was bonafide jewellery worn by them and they being foreign tourists were entitled to bring them in terms of the Baggage (Amended) Rules, 2006(Baggage Rules, 1998) read with Board Circular No. 72/98-Cus dated 24.09.1998. They had further stated that they had mentioned the value of dutiable goods as NIL in the customs declaration form because they believed that the impugned gold was not dutiable.

4.3 The appellate authority observed that both the applicants were found wearing kada and chain made up of crude gold which was covered under full sleeves and closed neck shirt. The gold collectively weighed 1210 grams and its value was Rs. 31,70,781/- which they had not declared to the customs and it amounted to violation of section 77, 78, 79 of Customs Act, 1962 read with Baggage Rules 1998 and the relevant policy provisions. The applicants had attempted to clear the impugned goods by opting for the green channel without filing true declaration. It was averred that if the applicants had kept the gold in their baggage, the gold would have been easily detected by customs while screening their baggage. However, the crude gold jewellery was worn by them and covered under full sleeves and closed neck shirt.

4.4 He found that Rule 7 of the Baggage Rules, 1998 prescribes vide Sr. No. (b) of Appendix E that a tourist of foreign origin may bring used personal effects and articles other than those mentioned in Appendix E upto a value of



2

Rs. 8000/- for personal use of the tourist or as gifts and travel souvenirs if these are carried on their person or in accompanied baggage of the passenger. It was therefore opined that the crude gold in the form of one kada and one chain totally weighing 606 grams and valued at Rs. 15,88,011/- worn by the Shri Meekrout Montree and crude gold in the form of one kada and one chain totally weighing 604 grams valued at Rs. 15,82,770/- worn by Smt. Kositsmith Supawadee did not appear to be falling within the scope of the term "used personal effects" as per Boards Circular No. 72/98-Cus dated 24.09.1998.

4.5 It was further observed that although the applicants claimed that they were the owners of the confiscated goods, they could not produce any documentary evidence to support their claim. As per Section 123 of the Customs Act, 1962, the burden of proving that the goods under seizure are not smuggled goods is on the person from whose possession the goods had been seized.

4.6 It also appeared absurd to the Commissioner(Appeals) that the applicants were not aware that non-declaration of the confiscated goods is an offence. It was averred that it was the responsibility of the passenger to be aware of the rules and regulations of the country he/she was visiting and therefore no one should go scot free by giving such an irresponsible statement. In so far as the request made by the applicant that they be allowed re-shipment/re-export of the goods, the Commissioner(Appeals) placed reliance upon the following case laws:

- (a) Jasvir Kaur[2009(241)ELT 521(Del)] – Unless the customs authorities come to the conclusion that the article recovered is an article for bonafide use of the passenger, the question of right to export being granted does not arise.
- (b) Hemal J. Shah – Since the passenger has neither made a true declaration nor requested for detention of goods for re-export before customs at the time of his arrival at airport, the re-export of goods cannot be allowed.
- (c) Aiyakannu vs. CC(Air), Chennai[2012(281)ELT 223(Mad)] – Foreign national not entitled to import gold in terms of Foreign Trade(Exemption



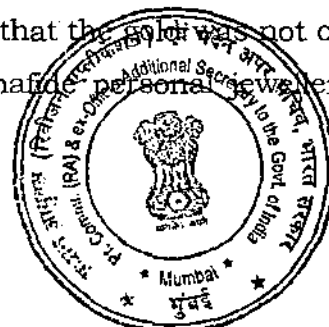
from Application of Rules in Certain Cases) Order, 1993 as it only applies to a passenger of Indian origin or a passenger holding a valid passport issued under Passport Act, 1967. Redemption fine was not permissible and impugned gold was liable to absolute confiscation as there was attempt to smuggle by green channel.

4.7 Commissioner(Appeals) found that in the comments submitted by the Department it was stated that the Air Intelligence Unit of CSI Airport had detected similar cases during the contemporaneous period wherein foreign nationals(especially Thai nationals) were found wearing prime gold in the form of crude jewellery and hence it can be said to be a modus operandi being followed by unscrupulous elements at that time to clear gold without detection and payment of customs duty. He therefore upheld the order of the adjudicating authority and rejected the appeals filed by the applicants.

5. The applicants have now filed revision applications. Their prayers while filing for revision are that absolute confiscation be set aside and that reshipment be allowed. The applicants were granted a personal hearing which was attended by Shri Prakash Shingrani, Advocate on 10.10.2018 on their behalf. He reiterated the grounds filed under the revision applications and prayed that the goods which were ordered for absolute confiscation be allowed for re-export on imposition of reasonable redemption fine and penalty.

6. The Government has gone through the facts of the case. The goods were not declared to the customs authorities by the applicant and the applicants had opted to walk through the Green Channel. The applicants were both found to be wearing one gold chain and one gold kada each totally weighing 1210 gms. The case of the Department is that the impugned goods have been concealed by covering the kada under full sleeves and the gold chains under closed neck shirt. The gold chains and the kadas are also stated to be made of crude gold.

7. The applicants have contended that the gold they were carrying was neither crude gold nor jewellery in crude form but was actually jewellery in its normal form. They have also contended that the gold was not of 24 karat purity. They have also argued that it was bonafide personal jewellery worn by them

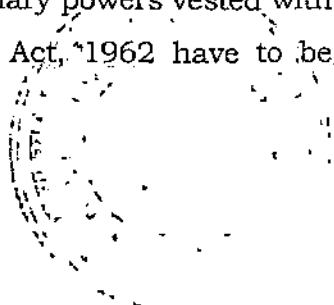


being foreign tourists. They have also argued that there was no concealment as they had worn the gold on their person.

8. On carefully going through the Order-in-Original and the impugned Order-in-Appeal, Government observes that there is no discussion about the report/certificate issued by the Govt. Approved Valuer regarding the seized jewellery. There is a mere assertion in the order of the adjudicating authority that the valuation certificate states that the seized jewellery is of 24 kt purity. On the other hand, the applicants have raised elaborate grounds before the Commissioner(Appeals) regarding the jewellery. The Commissioner(Appeals) has not countered any of these grounds or recorded findings to negate these grounds. Therefore, the allegation that the gold chain and kada are made of crude gold remains unsubstantiated by any firm findings and cannot be given any credence. As far as the findings recorded by Commissioner(Appeals) that the kada and chain were covered under full sleeves and closed neck shirt is concerned, Government finds that it clearly does not qualify as a case of ingenious concealment.

9. Government observes that both the applicants are Thai nationals. Nothing has been brought on record to suggest dubious antecedents. The findings recorded by the appellate authority refer to the comments submitted by the Department contending that during the contemporaneous period foreign nationals; especially Thai nationals were found wearing prime gold in the form of crude jewellery and hence it can be said to be a modus operandi being followed by unscrupulous elements. In this regard, the Government holds that generalized bald assertions cannot be the basis for confirmation of such grave charges. Such allegations can be given credence only if they are backed up by corroborative evidence.

10. Government finds that the applicants have admittedly failed to declare the gold chains and the kadas at the time of clearing customs. Hence, the goods are confiscatable under the provisions of Section 111 of the Customs Act, 1962. However, there is a catena of judgments which upholds the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The orders of the lower authorities



~

upholding absolute confiscation are therefore required to be set aside. Both applicants being foreign nationals, Government is inclined to accede to their request for re-export of the goods on payment of appropriate redemption fine. Both the applicants have also rendered themselves liable to be penalized for not declaring the impugned goods.

11. In view of the above, Government sets aside the Order-in-Appeal and allows redemption of the confiscated gold chain and kada totally weighing 606 gms recovered from Shri Meekrout Montree valued at Rs. 15,88,011/- (Rupees Fifteen Lakhs Eighty Eight Thousand Eleven Only) and gold chain and kada weighing 604 gms recovered from Smt. Kositsmith Supawadee valued at Rs. 15,82,770/- (Rupees Fifteen Lakhs Eighty Two Thousand Seven Hundred Seventy Only) on payment of redemption fine and penalty. The goods recovered from Shri Meekrout Montree may be redeemed on payment of redemption fine of Rs. 6,00,000/- (Rupees Six Lakhs Only) under Section 125 of the Customs Act, 1962 for re-export. The goods recovered from Smt. Kositsmith Supawadee may be redeemed on payment of redemption fine of Rs. 6,00,000/- (Rupees Six Lakhs Only) under Section 125 of the Customs Act, 1962 for re-export. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicants is therefore reduced from Rs. 3,00,000/- (Rupees Three Lakhs Only) each to Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) each on Shri Meekrout Montree and Smt. Kositsmith Supawadee under section 112(a) and (b) of the Customs Act, 1962.

12. Revision application is allowed in the above terms.

13. So, ordered.

Ashok Kumar Mehta
31XIV

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

ATTESTED

S.R. Hirulkar
22-11-18
S.R. HIRULKAR
Assistant Commissioner (R.A.)



ORDER No. ⁸⁵³ 852/2018-CUS (WZ) /ASRA/

DATED 31.10.2018

To,

- 1) Shri Meekrout Montree
C/o Prakash K. Shingrani
123, Himalaya House,
70, Palton Road,
Next to Haj House,
CST, Mumbai 400 001
- 2) Smt. Kositsmith Supawadee
C/o Prakash K. Shingrani
123, Himalaya House,
70, Palton Road,
Next to Haj House,
CST, Mumbai 400 001

Copy to:

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

