

373/161/B/14-RA

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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. 373/161/B/14-RA / 1247

Date of Issue 06.03.2018

ORDER NO. 86/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 05.03.2018 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. Mohamed Shakul Sithy Rizviya

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 519/2014 dated 20.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Smt. Mohamed Shakul Sithy Rizviya (herein referred to as Applicant) against the order in Appeal no 519/2014 dated 20.03.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the Applicant, a Sri Lankan National arrived at the Chennai Airport on 30.01.2011. Examination of his baggage and person resulted in the recovery of crude gold jewelry totally weighing 100 gms valued at Rs. 1,83,900/-. The Original adjudicating Authority vide Order-In-Original No. 1472/2013 dated 16.12.2013 ordered absolute confiscation of the impugned gold under Section 111 (d) of the Customs Act 1962, and imposed penalty of Rs. 18,000/- under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. C. Cus No. 519/2014 dated 20.03.2014 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 Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case.

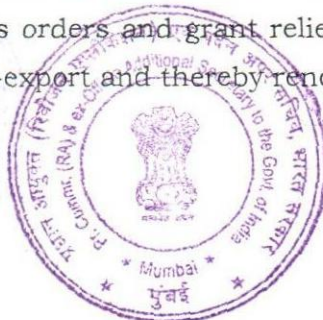
4.2 Both the Respondents failed to see that a true declaration was made by the Applicant before the Customs Officers and nothing was concealed or misdeclared.

4.3 The request for re-export was not at all considered by the lower authorities and the value adopted was on the higher side.

4.3 Both the Respondents failed to see that the Applicant had opted for the Red Channel proving her bonafides that she had dutiable goods. However the officers have totally ignored this and registered a case against the Applicant.

4.4 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 grant relief in setting aside personal penalty Rs. 18,000/- and order for re-export and thereby render justice.

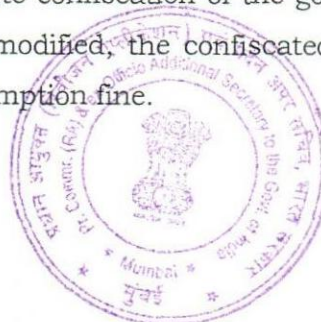


5. A personal hearing in the case was scheduled to be held on 14.02.2018, the Advocate for the respondent Shri K. Mohammed Ismail in his letter dated 12.02.2018 informed that his clients are unable to send their counsel all the way to Mumbai from Chennai and requested that the personal hearing may be 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 carefully gone through the case records. The Applicant is a Foreigner and therefore she is not eligible to import gold. She is a frequent traveller and aware of the rules. She already has one offence against her in the year 2011. Normally crude gold is not worn on person and considering the Applicants past profile the confiscation of the gold appears to be justified.

7. However, Applicants ownership of the gold jewelry is not disputed. The facts of the case also state that the Applicant had not cleared the Green Channel exit. There was no concealment of the goods, and neither was there a concerted attempt at smuggling these goods into India. The Applicant is a frequent traveller and has one previous offence registered against her. Government, however observes that there is no allegation of misdeclaration or concealment this time and the Applicant contention that she had made a true declaration is not disputed. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned gold is not justified and the applicant can be treated with a lenient view.

8. As the applicant has pleaded for re-export of the confiscated gold, Government is inclined to accept the plea. In view of the above mentioned observations, the Government also finds that a lenient view can be taken while imposing redemption fine and penalty upon the applicant. 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. The order of absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified, the confiscated gold jewelry is liable to be allowed for re-export on payment of redemption fine.



9. Taking into consideration the foregoing discussion, Government modifies the order of absolute confiscation of the impugned gold. Government allows redemption of the confiscated gold bracelet for re-export in lieu of fine. The confiscation of the gold jewelry totally weighing 100 gms, valued at Rs. 1,83,900/- (Rupees One lac eighty three thousand nine hundred) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 50,000/- (Rupees Fifty thousand) under section 125 of the Customs Act, 1962. Government also observes that facts of the case justify reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 18,000/- (Rupees Sixty thousand) to Rs. 15,000/- (Rupees Fifteen thousand) under section 112(a) of the Customs Act, 1962.

10. The impugned Order in Appeal 519/2014 dated 20.03.2013 is modified as detailed above. Revision Application is partly allowed.

11. So, ordered.

Ashok Kumar Mehta
5.2.2018

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

ORDER No. 86/2018-CUS (SZ)/ASRA/MUMBAI

DATED 05.03.2018

To,

Smt. Mohamed Shakul Sithy Rizviya
C/o K. Mohamed Ismail,
Advocate and Notarary Public
New No. 102, Lingi Chetty Street,
Chennai 600 001.

True Copy Attested

Sankar San Munda
SANKAR SAN 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.

