

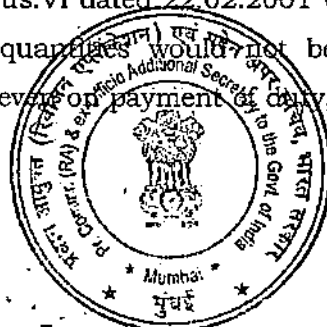
ORDER

This revision application has been filed by Smt. Backialakshmi(hereinafter referred to as the "applicant") against the Order-in-Appeal No. MAD-CEX-000-APP-126-14 dated 14.11.2014 passed by the Commissioner of Central Excise(Appeals-I), Coimbatore at Madurai.

2. Briefly stated facts of the case are that on 27.09.2014, the applicant had brought two numbers of raw gold chains weighing 200.1 gms 24 carats in semi-finished form and had not declared the goods but had instead concealed it with a scarf. As the goods were not bonafide baggage goods, the Assistant Commissioner of Customs(Airport), Madurai vide Order No. 165/2014-Batch A dated 27.09.2014 had after following the due process of law ordered for absolute confiscation of the two gold chains valued at Rs. 4,94,247/-(Rupees Four Lakh Ninety Four Thousand Two Hundred Forty Seven Only) under Section 111(d), (l), (m) & (o) and Section 119 of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade(D & R) Act, 1992 and imposed penalty of Rs. 1,25,000/-(Rupees One Lakh Twenty Five Thousand Only) under Section 112(a) of the Customs Act, 1962.

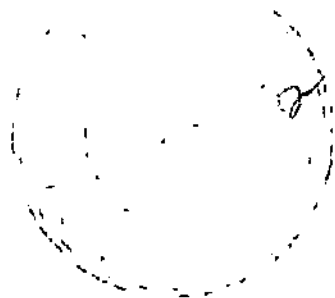
3. Aggrieved by the Order-in-Original, the applicant filed appeal before the Commissioner(Appeals) on the grounds that absolute confiscation of the gold chains was not necessary and that the gold chains may be released on payment of appropriate customs duty. It was further submitted that the gold chains had been gifted to the applicant by her husband and were not smuggled for commercial purposes. It was also pleaded that the penalty imposed was very heavy, harsh and excessive and that it may be reduced.

4. On taking up the appeal for decision, the Commissioner(Appeals) observed that the two raw gold chains in semi-finished form were brought by the applicant without declaring the said goods and by concealing them with a scarf. The Customs Authorities had seized the two gold chains in raw form, semi-finished condition having gross weight of 200.1 gms as they were not bonafide baggage. Commissioner(Appeals) placed reliance upon the CBEC Circular F. No. 520/67/2000-Cus.VI dated 22.02.2001 which clarified that "the import of goods in commercial quantities would not be permissible within the scope of the Baggage Rules, even on payment of duty, which clearly showed that the fine and



penalties should be such that it not only wipes out the Margin of Profit but also acts as a strong deterrent against repeated offence". He opined that the contents of the circular were squarely applicable to the present case as the intention of the applicant was to smuggle gold chains into India and evade payment of customs duty. The Commissioner(Appeals) therefore held that the goods were liable for confiscation with appropriate customs duty and that the applicant was also liable to penalty. He therefore rejected the appeal filed by the applicant and upheld the Order-in-Original dated 27.09.2014.

5. The applicant filed has filed for revision on various grounds. She has contended that the Commissioner(Appeals) has passed order without considering any of the points raised and the averments made by the applicant before him. It has further been stated that the allegation of concealment made out in her case is without basis as she was dressed in the normal attire of an Indian muslim wife; that the dupatta covered her head; that she was wearing a gold thali i.e. mangalsutra which was inside her dress and two gold chains gifted by her husband which were outside her dress and visible to the naked eye. She further submitted that there is no record as to how the gold chains were concealed and how they were traced out. She also requested that the CCTV recording on 27.09.2014 be viewed as it would confirm her claim that she had herself removed the two gold chains and kept them in the weighing machine in front of the customs officer. It was further contended that the charge of concealment was cooked up only to create grounds for confiscation of the two gold chains. It was asserted by the applicant that she had duly filled up the declaration form on her arrival and communicated her willingness to pay customs duty. It was asserted that the two gold chains were purchased from famous jewellers viz. Joyalukkas in Dubai which was proper finished jewellery sold under a proper bill, was not concealed and was not restricted for import into India unless brought for commercial purposes. The applicant further stated that her passport had been seized by the customs authorities and that the passport was returned to her only after she had made payment of the penalty amount of Rs. 1,25,000/-. On these grounds, the applicant prayed that the revisionary authority may set aside the absolute confiscation of 200.1 gms of two gold chains valued at Rs. 4,94,247/- and impose redemption fine on payment of customs duty, that the personal penalty may be deducted from customs duty and that re-export of the two gold chains which had been confiscated be permitted.

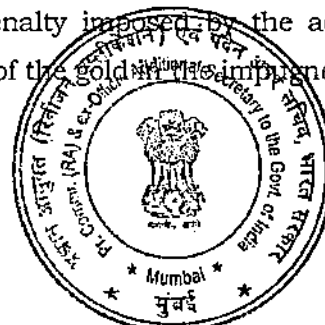


6. The applicant was granted a personal hearing on 23.10.2018. Smt. Backialakshmi – the applicant alongwith Shri Mohd. Jawat appeared for hearing. The applicant reiterated the submissions filed through the revision application. It was further submitted that a lenient view may be taken and that the goods may be allowed to be redeemed on payment of redemption fine, penalty & duty. The applicant also submitted that she did not want to re-export the goods.

7. The Government has gone through the facts of the case. The goods were not properly declared by the passenger as required under Section 77 of the Customs Act, 1962. The goods were brought in commercial quantity and the same are not bonafide baggage. Under the circumstances confiscation of the goods is justified.

8. However, the Applicant was not intercepted while trying to exit the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant is not a frequent traveller and does not have any previous offences registered against her. Government, also observes that there is no allegation of ingenious concealment and the Applicant had not been intercepted while attempting to cross the green channel. The only reason for absolute confiscation of the goods is that the goods were brought in commercial quantity and not declared. Although, the Applicant has contested the claim of the Department that she has not submitted declaration form, it is observed that the CBEC Circular No. 09/2001 gives specific directions to the Customs officer that in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Therefore, even assuming that declaration was not given by the Applicant, mere non-submission of the declaration cannot be held against the Applicant. The absolute confiscation is therefore unjustified.

8. Further, there is 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 a lenient view can be taken in the matter. The Applicant has pleaded for release of the goods with option to redeem the same on payment of fine and the Government is inclined to accept the plea. It is observed that the Applicant has already paid the penalty imposed by the adjudicating authority. The order of absolute confiscation of the goods in the impugned Order in



Appeal therefore needs to be modified and the confiscated goods are liable to be allowed on payment of redemption fine and reduced penalty.

9. In view of the above, Government sets aside the Order in Appeal and allows redemption of the confiscated two gold chains weighing 200.1 gms valued at Rs. 4,97,247/- (Rupees Four Lakhs Ninety Seven Thousand Two Hundred Forty Seven Only) on payment of redemption fine and penalty. The goods may be redeemed on payment of a redemption fine of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 1,25,000/- (Rupees One Lakh Twenty Five Thousand) to Rs. 30,000/- (Rupees Thirty Thousand Only) under section 112(a) of the Customs Act, 1962. The applicant shall be liable to pay the applicable duty as mandated under Section 125(2) of the Customs Act, 1962.

10. Revision application is partly allowed on the above terms.

11. So, ordered.

Ashok Kumar Mehta
29/11/18

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

ORDER No. ⁸⁶⁶/2018-CUS (SZ) /ASRA/MUMBAI

DATED 29.10.2018

To,
Smt. Backialakshmi
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Dindigul - 624 003
Tamil Nadu

ATTESTED

S.R. Hirulkar
23.11.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. Commissioner of Customs, Airport, Madurai
2. Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai
3. Sr. P.S. to AS (RA), Mumbai.
- ✓ 4. Guard File.
5. Spare Copy.



