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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. 373/106/B/2018-RA

9/37

Date of Issue 29.11.2018

ORDER NO. ⁸⁸⁷ /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29.10.2018 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 : Smt. Jevuri Nagalingam

Respondent : Commissioner of Customs, (Airport), Tiruchirapalli.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
68/2018-TRY(CUS) dated 27.03.2018 passed by the
Commissioner of Cus and C. Ex. (Appeals), Tiruchirapalli.

ORDER

This revision application has been filed by Smt. Jevuri Nagalingam (herein after referred to as the Applicant) against the order in Appeal No. C. Cus-I No. 68/2018-TRY(CUS) dated 27.03.2018 passed by the Commissioner of Cus. & C. Ex. (Appeals), Tiruchirapalli.

2. On 30.09.2016 the Applicant, a Sri Lankan National, arrived at the Trichy Airport. Examination of her person resulted in the recovery of assorted gold ornaments totally weighing 329 gms valued at Rs. 10,02,890/- (Rupees Ten lakhs Two thousand Eight hundred and ninety).

3. After due process of the law vide Order-In-Original No. TCP-CUS-PRV-ADC-024-17 dated 24.05.2017 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 2,50,000/- under Section 112 (a) of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 76/2017-TRY(CUS) dated 30.10.2017 reduced the penalty to Rs. 1,00,000/- imposed under section 112 (a) of the Customs Act, 1962 and partially allowed the Appeal of the Applicant.

5. Aggrieved with the above order the Applicants have filed this revision application interalia on the grounds that;

5.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; Gold is not a prohibited item and according to liberalized policy can be released on redemption fine and penalty; The Applicant was wearing the gold jewelry. The gold jewelry belonged to her and she came to India to seek treatment for her husband; Ownership of the gold is not disputed and there is no ingenious concealment; The Applicant was intercepted at the hand scan area the gold was worn by the Applicant and it was removed on the instructions of the officers, the CCTV footage will ascertain the truth; She was all along at the red channel under the control of the officers; the eligibility question does not arise for a foreigner; Being a foreign citizen non-filing of the declaration is only a technical fault; Just because of non-declaration the department cannot become the owner of the goods; The adjudicating authority failed to appreciate the difference between complete prohibition and restriction; Sections 111 d,l,m and o are not

attracted to this case; The Hon'ble Supreme Court (full bench) in the case of Om Prakash vs UOI states that the main object of the enactment of the said Act was the recovery of Excise Duties and not really to punish for infringement of its provisions.

5.2 The Revision Applicant prays that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and allow the gold for re-export on redemption fine and penalty and thereby render justice.

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 pleaded that the redemption fine and penalty be reduced. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the gold chain was recovered from the respondents pant pockets and it was not declared by the Respondent and therefore, confiscation of the gold is justified. However the gold was not indigenously concealed, in fact the Applicant claims that the gold chain was worn by him and it was removed on the instructions of the officers. Ownership of the gold is not disputed. Import of gold is restricted not prohibited. There are no instances of any previous offences on behalf of the respondent. 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, moreso because he is a foreign citizen.

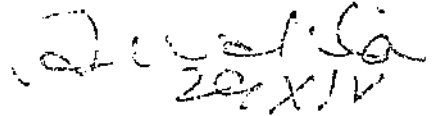
8. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government opines that absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold for re-export on fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 329 gms valued at Rs. 10,02,890/- (Rupees Ten lakhs Two thousand

Eight hundred and ninety) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 3,25,000/- (Rupees Three lakhs Twenty Five thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty imposed. The penalty of Rs. 1,00,000/- (Rupees One lakh) imposed under section 112(a) of the Customs Act, 1962 is appropriate.

10. Revision application is partly allowed on above terms.

11. So, ordered.



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

ORDER No. 887/2018-CUS (SZ) /ASRA/MUMBAI

DATED 27.10.2018

To,

Smt. Jevuri Nagalingam
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

Copy to:

1. The Commissioner of Customs(Airport), Tiruchirapalli.
2. The Commissioner of Cus and C. Ex. (Appeals), Tiruchirapalli.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.