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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. 373/66-A/B/12-RA

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Date of Issue 29.11.2010

ORDER NO. 917/2018-CUS (SZ) / 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 : Smt. Fathima Rinoza
Respondent : Commissioner of Customs, Chennai.
Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I 435/2012 dated 23.05.2012 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Smt. Fathima Rinoza (herein referred to as Applicant) against the Order in Appeal 435/2012 dated 23.05.2012 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 21.07.2011. She was intercepted and examination of her person resulted in the recovery of a four gold bangles chains weighing 194 grams valued at Rs. 4,48,625/- (Rupees Four lakhs Forty Eight thousand Six hundred and twenty five). The gold bangles were worn and covered with a full sleeved salwar.

3. After due process of the law vide Order-In-Original No. 383/2011 -AIR dated 21.07.2011 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, and imposed penalty of Rs. 45,000/- 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. 435/2012 dated 23.05.2012 rejected the Appeal of the Applicant.

5. The applicant has filed this Revision Application inter alia on the following grounds that

5.1 As per the baggage rules a foreigner can wear gold ornaments and come to India; The Applicant was wearing the gold bangles and no specific declaration is required; The gold bangles were brought to be worn for a marriage and was not intended for home consumption; The gold brought by the Applicant is not prohibited and the authority may allow her to redeem the same for re-export if confiscation is upheld; The Applicant was wearing the gold and can be cleared free of duty for re-export; Being a foreigner the gold is her personal effects and therefore the question of absolute confiscation does not arise; In the case of Vigneswaran vs U01 in W.P. 6281 of 2014 (I) dated 12.03.2014 has directed the revenue to unconditionally return the gold to the petitioner, observing that only because of not declaring the gold, the absolute confiscation is bad under law, further stating, the only allegation is that she did not declare the gold.

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

6. A personal hearing in the case was held on 25.10.2018, the Advocate for the respondent Shri A. Ganesh attended the hearing. He re-iterated the submissions filed in Revision Application and pleaded that the gold be allowed for re-export on redemption fine and penalty. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. It is a fact that the gold was not declared by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. However, the facts of the case state that the gold bangles were worn by the Applicant and the same was not ingeniously concealed. The gold is claimed by the Applicant and there is no other claimant. There are no previous offences registered against the Applicant. Gold is restricted but not prohibited. The gold is not in primary form and there are no rules restricting a foreigner in wearing gold when coming to India. There are no allegations that the Applicant tried to cross the green channel. 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 she is a foreign citizen.

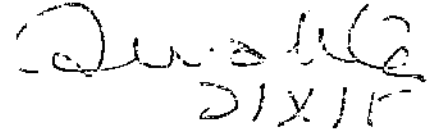
9. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government opines that absolute confiscation of the gold is harsh and unjustified 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.

10. In view of the above, Government sets aside the absolute confiscation of the gold. The impugned gold weighing 194 grams valued at Rs. 4,48,625/- (Rupees Four lakhs Forty Eight thousand Six hundred and twenty five) is allowed to be redeemed for re-export on payment of redemption fine of Rs.2,00,000/- (Rupees Two lakhs) 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. 45,000/- (Rupees Forty five thousand) to Rs. 40,000/- (Rupees Forty thousand) under section 112(a) of the Customs Act, 1962.

11. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms

12. So, ordered.



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

ORDER No. 917/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31-10-2018

To,

Smt. Fathima Rinoza
C/o A. Ganesh, Advocate,
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Copy to:

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