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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. 373/47/B/17-RA / 2191

Date of Issue 29.11.2018

ORDER NO. 929 /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. Kottavalla Gopalamma

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 11/2017 dated 11.01.2017 passed by the Commissioner of Customs (Appeals) Chennai.

ORDER

This revision application has been filed by Smt. Kottavalla Gopamma (herein referred to as Applicant) against the Order in Appeal 11/2017 dated 11.01.2017 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 27.09.2016. She was intercepted and examination of her person and baggage resulted in the recovery of a gold bit weighing 115 grams valued at Rs. 3,35,024/- (Rupees Three lakhs Thirty five thousand and twenty four). The gold bangles were recovered from her hand bag.

3. After due process of the law vide Order-In-Original No. 693/2016 – Batch A dated 27.09.2016 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. 33,500/- 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. 11/2017 dated 11.01.2017 rejected the Appeal of the Applicant.

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

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Applicant had proceeded toward the Red channel; The Lower authority ought to have seen that the Applicant was intercepted at the metal scanner itself and was not allowed to declare the gold; Baggage is not confined to merely bonafied baggage within the meaning of Section 79 of the Customs Act, 1962; the margin of profit works out to Rs. 3,500/- as per market value of gold @Rs. 3085/-; Applicant had not crossed the Customs barrier and as such the import had not consummated; She is not a frequent flier; The gold was purchased by her husband for their children; Absolute confiscation was not proper when the Applicant was not given the opportunity to declare; The lower authority ought to have seen that gold is not a prohibited item and the non-consideration of Section 125 of the Customs Act, 1962 is against the law and it is

mandatory to release the gold on redemption fine; the Apex court in the case of Hargovind Das vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner and option to allow redemption is mandatory.

5.2 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 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 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.

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. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 115 grams valued at Rs. 3,35,024/- (Rupees Three lakhs Thirty five

thousand and twenty four) is allowed to be redeemed for re-export on payment of redemption fine of Rs1,20,000/- (Rupees One lakh Twenty thousand) 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. 33,500/- (Rupees Thirty three thousand five hundred) to Rs.24,000/- (Rupees Twenty Four 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. ⁹²⁹ /2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.10.2018

To,

Smt. Kottavalla Gopalamma
C/o A. Ganesh, Advocate,
F. Block 179, IV Street,
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Chennai - 600 102.

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.