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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

F.No. 373/22/B/14-RA / 1307

Date of Issue 14.03.2018

ORDER NO. 97/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 13.03.2018 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. Ketheeswary

Respondent : Commissioner of Customs(Airport), Trichy 620 001.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 193/2013 (TTN) (Cus) dated 22.11.2013 passed by the Commissioner of Customs (Appeals), Trichy.



ORDER

This revision application has been filed by Smt. Ketheeswary against the order no C.Cus No. 193/2013 (TTN) (Cus) dated 22.11.2013 passed by the Commissioner of Customs (Appeals), Trichy.

2. Briefly stated facts of the case are that the applicant, a Sri Lankan national had arrived at the Trichy Airport on 30.08.2011. Officers of the DRI who were keeping vigil, identified the Applicant and on interrogation the Applicant revealed that she was carrying gold bars concealed in her rectum. The Applicant voluntarily ejected 11 gold bars of uneven shape totally 1090.750 gms valued at 29,66,840/-. The Applicant was arrested and remanded to judicial custody. After due process of the law the Original Adjudicating Authority, vide his order 07/2013 dated 08.02.2013 absolutely confiscated the gold rods referred to above under section 111(d), 111(i) and 111(m) of the Customs Act, 1962. A Penalty of Rs. 5,00,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Trichy, vide his Order in Appeal No. 193/2013 (TTN) (Cus) dated 22.11.2013 rejected the Appeal.

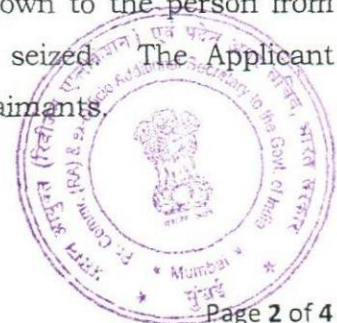
4. The applicant has filed this Revision Application inter alia on the following grounds that;

4.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case.

4.2 The gold is not a prohibited item. Non declaration of the goods cannot become prohibited after import, and according to liberalized policy the gold can be released on payment of redemption fine and penalty.

4.3 The respondent has passed an order stating that as the Applicant is a carrier, the gold cannot be redeemed on payment of redemption fine. Whereas under section 125 of the Customs Act, even when confiscation is authorized, gives it to the owner and where such owner is not known to the person from whose possession or custody such goods have been seized. The Applicant submits that she is claiming the gold and has no rival claimants.

*DM*





4.4 There is no provision in the Customs Act which made it mandatory to confiscate absolutely. Section 125 it is open for the Authority to give an option for redemption against payment of fine.

4.5 The eligibility to import gold vide notification 31/2003 is applicable for Indians and Indian passport holders only, whereas the Applicant is a foreign national.

4.6 As per the circular 394/71/97-CUS (AS) GOI dated 22.06.1999 has stated that arrest and prosecution need not be considered in routine in respect of foreign nationals and NRIs who have inadvertently not declared.

4.7 The Hon'ble Supreme Court has in recent judgments states that the object of the Customs Authority is to collect the duty and not to punish the person who violated the Customs Act.

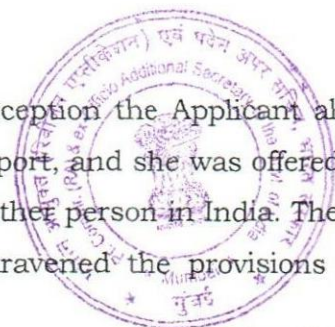
4.8 Assuming without admitting she has not declared the gold it is only a technical fault. This the first case registered against the Applicant and she is not a die-hard smuggler and has no bad antecedent.

The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed in support of her case, and prayed for permission to re-export the gold, or release the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the case records it is seen that the Applicant had concealed the gold bars in her rectum. In her statement she has admitted that the gold was ingeniously concealed with the intention to hoodwink the customs authorities. Government also notes that the gold bars were not declared by the Applicant. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger as she was not an eligible passenger to import gold.

7. In her voluntary statement recorded after her interception the Applicant also revealed that the gold was given to her at the Singapore Airport, and she was offered a monetary consideration to carry and hand it over to some other person in India. There is no doubt about the fact that the Applicant has contravened the provisions of



Customs Act, 1962. Therefore, the seized gold pieces and gold chain is liable for absolute confiscation under section 111 (d), (i), (j), (l), and (m) of the Customs Act, 1962 as the applicant had deliberately concealed the seized gold in the rectum to avoid detection and to dodge the Customs Officer and smuggle out the same without payment and payment of appropriate duty. This clearly indicates *mensrea*, and that the Applicant had no intention of declaring the gold to the authorities and if she was not intercepted before the exit, the Applicant would have taken out the gold bars without payment of customs duty. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal. The impugned gold needs to be confiscated absolutely and the Revision Application is liable to be rejected.

8. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal No. 193/2013 (TTN) (Cus) dated 22.11.2013.

9. Revision Application is dismissed.

10. So, ordered.

*Ashok Kumar Mehta*  
13.03.18

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

ORDER No. 97/2018-CUS (SZ) /ASRA/MUMBAI DATED 13.03.2018

To,

Shri Ketheeswary

C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

True Copy Attested

*Sankarsan Munda*  
SANKARSAN MUNDA  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Trichy.
2. The Commissioner of Customs and Central Excise (Appeals), Williams Road, Cantonment, Tiruchirappalli.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

