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SPEED POST



**F.No.373/101/B/13-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue..17/5/16.....

**ORDER NO. 41/2016-CUS DATED 11.05.2016** OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129 DD OF THE CUSTOMS ACT, 1962.

Subject : Revision Application filed under Section 129 DD of the Customs Act, against the Order-in-Appeal No. 118/2013 dated 30.08.2013 passed by Commissioner of Central Excise (Appeals), Madurai.

Applicant : Smt. N. Auxcelia.

Respondent : Commissioner of Customs and Central Excise, Madurai.

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## ORDER

This Revision Application is filed by Smt. N. Auxcelia, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 118/2013 dated 30.08.2013 passed by the Commissioner of Central Excise (Appeals) Madurai, with respect to Order-in-Original No. O.S.37/2013 dated 09.07.2013 passed by Deputy Commissioner of Customs (Airport), Madurai.

2. The brief facts of the case are that Smt. N. Auxcelia, wife of Shri Joseph Edin, holder of Indian Passport No. K 3473120 travelled from Srilanka to India by flight no. SG 3316 and arrived at Madurai Airport on 09.07.2013. The gold jewellery as detailed below was placed under detention/seizure under Section 110 of the Customs Act, 1962 and confiscated under Section 111(d),(l),(m) & (o) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (D&R) Act, 1992 on a reasonable belief that it was liable for confiscation under Section 111 of the Act, ibid as the passenger had brought gold jewellery in commercial quantity, the goods were non-bonafide and above specified limits in Baggage Rules.

| Sl. No. | Description of goods     | Weight in Grams | Value in Rs.       |
|---------|--------------------------|-----------------|--------------------|
| 1.      | Ear Rings 9 pieces       | 23.21           | 59,117.00          |
| 2.      | Bangles 4 Nos.           | 48.00           | 1,22,258.00        |
| 3.      | Stone studded necklace-1 | 23.12           | 58,888.00          |
| 4.      | 2 chains                 | 96.13           | 2,44,848.00        |
|         | <b>TOTAL</b>             | <b>190.46</b>   | <b>4,85,111.00</b> |

2.1 On tendering the request for waiver of Show Cause Notice by the applicant the case was spot adjudicated by the Deputy Commissioner of Customs (Airport) after due process of law vide Order-in-Original No. O.S.37 dated 09.07.2013 ordering the following:-

(i) confiscation of goods valued at Rs 4,85,111/- under Section 111(d),(l),(m) & (o) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (D&R), Act 1992, with an option to redeem the goods on payment of redemption fine of Rs. 1000/- in lieu of confiscation under Section 125 of the Customs Act, 1962 within 7 days from the date of receipt of the order.

(ii) imposition of penalty of Rs. 5,000/- under Section 112(a) of the Customs Act, 1962.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeals) who vide his Order-in-Appeal No. 118/2013 dated 30.08.2013 upheld the Order-in-Original.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129DD of Customs Act, 1962 before Central Government on the following grounds:-

4.1 That the orders of original authority and appellate authority are not maintainable on facts and law.

4.2 That both the authorities have failed to appreciate and consider the facts that most of the articles are used ones except 4 bangles, one pair of ear ring and pendent(stone studded), which were purchased on 25.06.2013, from Khazana Jewellery, Tirunelveli. The bill is in the appellant name and these articles bear the seal "KZ". The bills clearly show the fact that these new jewellery are in exchange of old jewellery.

4.3 That both the authorities failed to appreciate and consider the fact, that the applicant hails from a reputed family, and it is customary and convention that these jewellery are worn by the ladies during these functions in different styles to impress their social standing.

4.4 That the observation of the Commissioner(Appeals) that the applicant could not produce corroborative evidence to prove her case is false and against the records produced. Moreover, he had not specified any reason and analysis as to how he could not corroborate. The remarks are general and biased.

4.5 That the wedding invitation, purchase bills, and the marks bear on the ornaments are substantial in nature and genuine evidence to prove the case of the applicant. That these facts have been purposely omitted in both original and appeal orders.

4.6 That the observation of the Appellate Authority that ignorance of law cannot be an excuse to escape from the clutches of law, is an attempt to deny justice and denial of principle of natural justice.

4.7 That the yardstick applied by original authority that the seized and confiscated ornaments are in commercial nature begs all understanding of human mind. That a lady can have four bangles in her hand; one pendent, two chains, 4 pairs of ear rings, one necklace in her possession for own use, more so in the circumstances, when there are 5 members of family combined in a journey. That necklace belongs to her daughter and one chain belongs to her husband. Some of the earrings belong to her mother in law.

4.8 That the acts of the original authority is high handed and biased. He even did not think, the true weight of gold should be arrived after reducing the weight of the stones and checking the purity of the gold.

4.9 That the order of detention, seizure and confiscation of the applicant's jewellery is against the provisions of law and established convention in our country.

4.10 That the gold jewellery seized belongs to four, but the case has been proceeded against the applicant only.

4.11 That the applicant and their family members were not given free allowance also. And prayed to release of the ornaments unconditionally to the applicant or alternatively order for re-examination of the ornaments, for its genuine make, markings, comparison with bills, assaying(Appraiser) by authorized persons and release the goods early.

5. A show cause notice was also issued to the Respondent Commissionerate on 14.03.2016, in response to which the following submissions have been made:-

5.1 That the applicant in her grounds of appeal stated that the goods brought by her were used one and the authorities who passed the orders had failed to notice the same. That the contention of the applicant is not sustainable as the applicant neither produced any documentary evidence to prove her contention nor furnished any export certificate to the effect that the goods/jewellery was used one. That the applicant hails from a reputed/educated family, she would have known all the Customs formalities/ Baggage Rules in respect of export/import of Gold jewelleryes and ignorance of law is not an excuse.

5.2 That the applicant tried earnestly to produce all the purchase bills available with her to prove her contention that the jewellery seized by the Customs at Madurai Airport are old jewellery being used by her. Though the photocopies of the bills furnished by her before the appellate authority bear the applicant's name, it does not tally with the quantity of the goods seized. Because in the detention receipt in O.S. no. 37/2013 dated 09.07.2013, the weight of the 4 bangles had been shown as 48 grams whereas the tax invoice dated 25.06.2013 of M/s Khazana Jewellery, shows the weight of 4 fancy bangles as 41.940 grams. Besides, two chains weighing 96.13 grams were detained by the Customs and for this the applicant had not produced any bill. As the quantity does not tally with the seized goods, the bill produced by her is an afterthought and cannot be taken into consideration that the bills are corroborative evidence. Had the applicant gone to Srilanka to attend a marriage function carrying so much of gold jewellery, she should have informed the Customs authorities before leaving India. All the passenger leaving India are subject to clearance by Customs Authorities. Only bonafide baggage is allowed to be cleared by the passengers. There is a procedure prescribed whereby the passengers leaving India can take the export certificate for the various high value items such as camera, video camera as well as jewellery from Customs Authorities. Such an export certificate facilitates re-importation of such goods while bringing back the things to India as no duty is charged. The applicant failed to do so and thus the goods seized are not to be considered as 'used one.'

5.3 That in the grounds of appeal, the applicant stated that the goods seized by the Customs authorities were not only belong to her but also belong to her relatives and free allowances were not given to them by the Customs authorities. In this regard, in the present case, the duty free allowance is not applicable to the applicant as per Baggage Rules, 1998 which reads thus:

*Rule 6: " An Indian passenger who has been residing abroad for over 1 year is allowed to bring jewellery free of duty in bonafide baggage up to an aggregate value of Rs50000/- in the case of a male passenger or Rs. 1,00,000/- in the case of a female passenger."*

*[or] Rule 3: " Any passenger of Indian Origin holding a valid passport if coming to India after stay abroad for more than 3 days is allowed free of duty excluding jewellery."*

In the instant case, the applicant had not stayed abroad within stipulated time period, both the conditions [a & b] are not applicable to the applicant and hence free allowance cannot be given to the her and the person who carries the goods are subjected to Customs procedures and the goods cannot be distributed among their relatives who accompanied her at the time of arrival. The free allowance under this rule shall not be allowed to be pooled with the free allowance of any other passengers. And, hence the contention of the applicant is not legal.

5.4 Though the applicant had tried to produce all the purchase bills available with her to prove her claim that the jewellery detained by the Customs at Madurai, Airport are old jewellery being used by her (the purchase bills produced being in her name), it is also true that the bills produced by her do not tally with the seized articles, as held by the Commissioner (Appeals). The order passed by the Appellate Authority is legal and proper.

6. Personal hearing scheduled in this case on 04.04.2016 and was attended by Shri Abdul Nazeer, Advocate on behalf of the applicant who reiterated the grounds of revision application. During personal hearing the applicant also stated that they had gone to Srilanka with family to attend wedding for purpose of which she had carried jewellery of hers and that of her mother-in-law; that as its her own jewellery which is brought back, no duty is chargeable; also as it is her 1<sup>st</sup> visit no penalty be imposed ; that there is no concealment or mis-declaration or non-declaration of the jewellery; that the bangles belonged to her, the chain was of her husband's (more than 10 years old), the necklace of her daughter and studs are of her mother-in-law.

7. Government has carefully gone through the relevant case records and perused Order-in-Original and Order-in-Appeal and written submissions made in response to the hearing.

8. On perusal of records, Government observes that the applicant travelled from Srilanka to India and arrived at Madurai Airport on 09.07.2013. On examining of her hand baggage, Customs Officers found gold jewellery consisting of 4 bangles, one stone studded necklace, 2 nos. of chains and 9 nos. of ear rings weighing 190.46 grams. The gold jewellery was detained/seized under Section 110 of the Customs Act, 1962 on a reasonable belief that it was liable for confiscation under Section 111 of the Act, ibid as the passenger failed to produce export certificate or any purchase invoice in support of her claim that the jewellery was old and used. The case was spot adjudicated by the Deputy Commissioner of Customs (Airport) who vide Order-in-Original No. O.S.37 dated 09.07.2013 ordered for confiscation of goods valued at Rs 4,85,111/- under Section

111(d),(l),(m) & (o) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (D&R), Act 1992, with an option to redeem the goods on payment of redemption fine of Rs. 1000/- in lieu of confiscation under Section 125 of the Customs Act, 1962 within 7 days from the date of receipt of the order and imposed a penalty of Rs. 5,000/- under Section 112(a) of the Customs Act, 1962. Commissioner (Appeals) vide Order-in-Appeal No. 118/2013 dated 30.08.2013 upheld the Order-in-Original. Now the applicant has filed this Revision Application on the grounds mentioned at para 4 above.

9. The applicant's contention is that she carried with her some old and used jewellery at the time of departing to Srilanka to be worn by her and her family members at the marriage function. That she admitted the mistake of not obtaining the export certificate from the Customs authorities in respect of impugned gold jewellery. Government observes that as rightly observed by the Commissioner (Appeals) the photocopies of the bills furnished by her do not tally with the quantity of the goods seized. The weight of the 4 bangles had been shown as 48 grams whereas the tax invoice dated 25.06.2013 of M/s Khazana Jewellery, Tirunelveli shows the weight of the 4 fancy bangles as 41.940 grams. Further while 2 gold chains were seized from the passenger, bill for only one has been produced which is of 2011, whereas at the time of hearing it was claimed that the chain belonged to her husband and is over 10 years old. In view of these discrepancies, Government finds, that the applicant has failed to establish her claim that the impugned goods were old and used jewellery of her family.

10. Further, the claim of the applicant that jewellery was taken from India and brought back without informing the Customs at the time of departure due to ignorance of law does not hold good as it is a well settled position of law that ignorance cannot be an excuse to escape for not conforming to law.

11. Government observes that in terms of Section 77 of the Customs Act, 1962, the owner of any baggage will make a declaration of its contents to the Customs officer. In this case gold weighing 190.46 grams in the form of different gold jewellery items found in possession of the applicant is in commercial quantity and does not constitute a part of bonafide baggage in terms of Section 79 of the Customs Act, 1962 read with Rule 3 and 6 of the Baggage Rules, 1998. As per Rule 3 passengers returning from countries other than Nepal, Bhutan, Myanmar or China are allowed to bring free of duty used personal effects excluding jewellery as specified in Appendix A to the Rules. In terms of Rule 6 a passenger returning to India after a stay of over one year and above shall be allowed clearance free of duty of jewellery in his bonafide baggage to the extent mentioned in Appendix D to the Rules. Jewellery is therefore not a permissible item of duty free import as personal baggage under Section 79 of the Customs Act, 1962 read with the Baggage Rules issued thereunder particularly if the passenger has lived abroad for less than one year.

12. The applicant has also contended that the goods seized by the Customs authorities did not only belong to her but also belonged to her relatives and free

allowances were not given to them by the Customs authorities. In this regard, Government notes that in the present case the duty free allowance is not applicable to the applicant as per Baggage Rules, 1998. In the instant case, the applicant had not stayed abroad within the stipulated time period and hence free allowance for import of jewellery cannot be allowed to the applicant.

13. In view of the above facts and overall circumstances, Government finds no reason to interfere with the impugned order in appeal and upholds the same as just and légal.

14. Revision application is rejected being devoid of merits.

15. So ordered.



**(RIMJHIM PRASAD)**

Joint Secretary to the Government of India

Smt. N. Auxcelia,  
W/o Shri Joseph Edin,  
Plot no. 8, Bell Amorces Colony,  
Rajkamal Nagar, Palaymkottai,  
Tirunelveli-627002, Chennai



ATTESTED

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**ORDER NO. 41/2016-CUS DATED 11.05.2016**

Copy to:

1. The Commissioner of Central Excise, Customs & Service Tax, C.R. Building, Bibikulam, Madurai-625002.
2. The Commissioner of Central Excise (Appeals), Central Revenue Building, Lal Bahadur Shastri Marg, Madurai-625002
3. The Deputy Commissioner of Customs, O/o the Commissioner of Customs, Customs Airport, Madurai
4. Shri M. Abdul Nazeer, Advocate, No.6, Gandhi Irwin Road, Hotel Imperial Complex, Egmore, Chennai-600008
- ✓ 5. Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED



(Shaukat Ali)

Under Secretary to the Government of India