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F.No.380/25/B/15-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue...22/1/16

ORDER NO. 01/2016-CUS DATED 22.01.2016 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, 1962 against the Orders-in-Appeal No. C.CUS No.349-350/2015, dated 29.06.2015 passed by the Commissioner of Customs (Appeals-I) Chennai

Applicant : Commissioner of Customs, Chennai-I, Commissionerate Chennai.

Respondent : Shri Moinududdin.

ORDER

This revision application is filed by the Commissioner of Customs Chennai-I (hereinafter referred to as the Department) against the Order-in-Appeal No. 3498350/2015 dated 29.06.2015 passed by Commissioner of Customs, Chennai(Appeal-I) with respect to Order-in-Original No. 218/2014 dated 27.03.2015 passed by Joint Commissioner of Customs(Adjudication). The Hon'ble High Court of Chennai in the W.P. No.24230 of 2015 filed by the respondent directed that the Revisional Authority dispose of the revision, after following due process of law within a period of eight weeks from the date of receipt of this order.

2. Brief facts of the case are that on 05.03.2014 the respondent, a passenger by the name Shri Moinuddin, s/o Shri Syed Shabuddin, holding Indian Passport number H4127020 dated 08.06.2009, arrived at Chennai Airport from Kuwait via Doha by Qatar Airways flight no. QR 528. He was intercepted by Customs Officer on reasonable suspicion, while walking through green channel for the exit with his one hand bag and two checked-in baggage, after filling up the value of the goods carried by him as Nil in his Customs disembarkation card. The said passenger was asked specific question as to whether he was carrying any gold/contraband goods either in his baggage or on his person to which he replied in negative. Upon noticing that the passenger became nervous, a detailed examination of his two checked-in baggages and one hand bag was conducted, in the presence of two witnesses, but nothing incriminating was found. Thereafter, a notice under Section 102 of the Customs Act, 1962 was served upon him for the personal search. Before the personal search was taken he was explained and made to understand the provisions of the said Section. He agreed for the personal search to be conducted in presence of gazetted officer and witnesses. During the personal search nine bits of yellow coloured metal from his pants pocket was recovered which totally weighed 1000 grams and was suspected to be gold. The Government approved gold appraiser was called upon to examine the recovered gold in the presence of witnesses and the said passenger and on examining the yellow metal bits, he certified them as made of gold of 24 carat purity, totally weighing 1000 grams and appraised the total value of the gold at Rs 30,84,000/- at the rate of Rs 3084/-per gram on the date of seizure. As Shri Moinuddin, was not in possession of any valid permit/licence/documents issued by the competent authority for the licit import of gold and he had attempted to smuggle the impugned gold by not declaring the same to Customs by way of concealment inside his pants pocket and walking through the green channel, the said gold totally weighing 1000 grams was seized for further action under Section 110 of the Act, *ibid*, read with Foreign Trade (Development & Regulations), Act 1992.

2.1 The passenger, Shri Moinuddin in his statement dated 05.03.2014 recorded immediately after the seizure, under Section 108 of the Customs Act, 1962 inter-alia stated; that he was working in a private firm in Kuwait for the past 7 years; that only 300 grams of gold bits belonged to him and rest of the quantity belonged to his four friends who were his roommates at Kuwait; that he carried the gold bit by keeping it in his pants pocket without declaring the same to Customs to evade Customs duty; that he knew that he was not an eligible passenger to import gold at the concessional rate of duty and he did not have money to pay Customs duty; that he did not know the address of the above said four persons in India; that it was agreed amongst them that whenever his above said friends visit India, they would collect the gold at his residence after paying him the service charges of Rs. 5000/- per 100 grams; that he knew that bringing gold without valid documents and by not declaring the same to Customs was an offence; that this was his first offence for earning benefit of Rs. 5000/- per 100 grams and requested for leniency.

2.2 On a reasonable belief that Shri Moinuddin was guilty of an offence punishable under Sections 132 & 135 of the Act, ibid he was placed under arrest on 05.03.2014 by the Customs officer and Shri Moinuddin vide his letter dated 05.03.2014 intimated that he was not in the position to avail the bail conditions as offered by the Customs officer and opted for judicial remand and was subsequently granted bail by the Judicial Magistrate. A show cause notice under Section 124 of the Customs Act, 1962 was issued to Shri Moinuddin, for his alleged offence on contravening Sections 77 & 79 of the Act, ibid, proposing as to why the impugned gold should not be confiscated under Section 111(d) & (l) of Customs Act, 1962 and as to why the penalty under Section 112 (a)&(b) of the Act ibid not be imposed on him.

2.3 After due process of law the case was adjudicated by the adjudicating authority by passing Order-in-Original No.218 /2014 dt. 27.03.2014, ordering the following:-

- (i) The impugned gold totally weighing 1000 grams valued at Rs 25,72,280/- (International price of gold) was confiscated under Section 111(d) & (l) of the Customs Act, 1962 with an option to redeem the same for re-export on payment of fine of Rs12,50,000/- under Section 125 of the Act, ibid or if option to redeem for the home consumption to be opted on payment of duty @ 36.05% in addition to the Redemption Fine.
- (ii) Imposed a penalty of Rs. 2,50,000/- (Two lakhs fifty thousand only) on Shri Moinuddin under Section 112(a) &(b) of the Customs Act, 1962.

3. Being aggrieved by the said Order-in-Original, both Shri Moinuddin and the Department filed Appeal before the Commissioner of Customs, Chennai (Appeals-I)

who decided the appeal vide common Order-in-Appeal No. 349-350/2015 dated 29.06.2015. Commissioner of Customs (Appeals -I) modified the impugned Order-in-Original by reducing redemption fine to Rs. 6,00,000/- (six lakhs only) from Rs. 12,50,000/- (Twelve lakhs fifty thousand only) and held the penalty to be fair. The Department's appeal for setting aside the impugned Order-in-Original and confiscating the goods absolutely as the passenger was not the genuine owner of the goods was set aside on the ground that it was not alleged in the Show Cause Notice that the passenger is a carrier and hence not entitled to redemption fine.

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

4.1. That Shri Moinuddin, holder of Indian Passport H 4127020 dated 08.06.2009 arrived at Chennai from Kuwait by Qatar Airway flight No QR 528 dated 05.03.2014 and was exiting through green channel. That the passenger was intercepted at the green channel of the arrival hall of the Anna International Terminal on a reasonable belief that he might be having gold either in his baggage or on his person. That on examination the officers recovered 9 cut pieces of yellow colored metals from his pant pocket totally weighing 1000 gms which were suspected to be gold. That the Government of India approved gold appraiser certified the recovered 9 nos yellow colored metal to be gold of 24 carat purity, totally weighing 1000 grams and appraised the value at Rs. 30,84,000/- at the rate of Rs. 3084/- per gram. That the gold was confiscated and the statement was recorded from the passenger under Section 108 of the Customs Act, 1962. That in the said statement, the passenger has admitted that majority quantity of gold belongs to his friends and that he is carrying the same for certain monetary consideration.

4.2. That the passenger, have contravened the Section 77 and 11 of Customs Act, 1962 read with Regulations 3 (1) of Foreign Exchange Management (Export and Import of Currency) Regulations 2000 which made the smuggled gold liable for absolute confiscation under Section 111 (d) and (l) of the Customs Act, 1962. The appellate authority without considering the following aspects has given an option to redeem the gold on payment of redemption fine of Rs. 6,00,000/- and penalty of Rs. 2,50,000/- for re-export.

4.2.1 That the eligibility of a passenger to clear the gold imported by him is covered under Notification No. 12/2012-Cus dated 17.03.2012. That the said notification states that the passenger of Indian origin or a passenger holding a valid Indian Passport issued under the Passport Act, 1967 who is coming to India after a period of stay not less than six months of stay abroad and short visits, if any, made by this eligible passenger during the above said period of six months shall be ignored if the

total duration of stay on such visit does not exceed thirty days can bring gold upto 1 kg and the duty has to be paid @ 10% on the value of the gold and the duty has to be paid in foreign currency.

4.2.2 That Rule 6 of Baggage Rules, 1998 states that a passenger who stayed abroad for more than one year can bring gold jewellery (22 carat) to an extent of Rs. 1 lakh (female passenger) and to an extent of Rs.50,000/- (male passenger) and the same can be cleared from Customs without payment of duty.

4.2.3 That in the present case, the passenger did not declare the gold possessed by him under Section 77 of the Customs Act, 1962 and was not in possession of foreign currency for the payment of duty and that the passenger has not fulfilled the conditions stipulated under Notification No. 12/2012 and Baggage Rules. That the passenger was ineligible to import the gold and accordingly the Order-In-Appeal permitting the ineligible passenger to re-export the smuggled gold is incorrect in law.

4.3 That the decision of the appellate authority to allow the re-export of goods on payment of redemption fine is not acceptable as the passenger with an intention to smuggle did not declare the gold in his possession and mis-declared the same in the Customs Declaration Card as 'NIL' and attempted to smuggle the gold out of the Airport. In support of the contention, the following case laws are relied upon:-

- Hon'ble Apex Court in the case of Om Prakash Bhatia Vs Commissioner of Customs reported in 2003 (155) ELT 423 (SC) has held that if there is any prohibition of import or export of goods under the Act or any other law subject to certain conditions, it would be considered to be prohibited goods and if the conditions prescribed are not complied with it would be considered to be prohibited goods.
- The Hon'ble Supreme Court in the case of Samynathan Murugesan Vs Commissioner of Customs reported in 2010 (254) ELT A15 (SC) has held that as the passenger did not fulfil the basic eligibility criteria, which makes the imported item a prohibited goods.

4.4 That the appellate authority in his order has stated that the ownership of the gold was not alleged in the Show Cause Notice is not acceptable as the passenger himself in his voluntary statement given under Section 108 of Customs Act, 1962 has stated that the gold weighing 300 grams only is owned by him and the balance gold weighing 700 grams is owned by his roommates and that he carried the gold for monetary consideration of Rs. 5,000/- per 100 grams. That the fact that the passenger is not the owner of the goods have been covered in para 2 of the Show Cause Notice. That the passenger is also a carrier of smuggled gold.

4.5 The facts of the case and facts in the case laws relied upon by the department are same as discussed below:-

Sl.No.	Case law referred	Facts involved in the case law referred	Facts involved in the Present case
1.	G.V. Ramesh and other Vs CC(Air)	The gold and currency can't be redeemed, when the same do not belong to them	The passenger in his statement has admitted that the gold do not belong to him and he carried the gold for monetary consideration and hence the gold cannot be redeemed.
2.	UOI Vs Mohd Aijaj Ahmed	Absolute confiscation of gold was made, since the passenger was a carrier and the gold did not belong to him	The passenger is a carrier, who smuggled gold and he admitted in his statement that the seized gold belong to his roommates.
3.	Faisal Khan Vs Joint Commissioner	The statement recorded under Section 108 of CA, 1962 is admissible.	The passenger retracted his admission and informed that he is the owner of the gold seized during the personal hearing. The retraction is not acceptable as the statement was recorded under Section 108 of CA 1962 on 5.3.2014. Whereas he retracted the statement belatedly only at the time of PH held on 21.01.2015 after the gap of 10 months in the case of P.B. Nair C&F Pvt. Ltd Vs CC. Mumbai reported in 2015 (318)ELT437(Tri Mum), CESTAT has held that retraction of statement under Section 108 is a judicial proceeding and belated retractions of statements after about one and half years cannot take away the evidentiary value of original statement.

4.6 That the appellate authority has contended that the case laws relied by the department are distinguishable. The following case laws are relied upon by the applicant.

- Hon'ble Tribunal vide order no. 1980-1995/09 dated 24.12.2009 in the case of G.V. Ramesh and others Vs CC(Air) Chennai reported 2010 (252) ELT 0212

- (T.Mad) wherein the Hon'ble Tribunal has held that the impugned goods and foreign currency cannot be allowed to be redeemed by them on payment of fine and duty as the same do not belong to them but to someone else. The case law is squarely applicable to this case since the passenger is not the owner of the gold. Appellate authority himself has accepted in para 7(ii) (a) of the Order-In-Appeal that the passenger proved that the passenger is not the owner of the gold.
- The Hon'ble High Court in the case of UOI Vs Mohammed Aijaj Ahmed in WP No. 19.01.2003 decided on 23.07.2009 reported in 2009 (244) ELT 49 (Bom)
- has set aside the order of the CESTAT allowing the redemption of gold and upheld the order passed by the Commissioner of Customs ordering absolute confiscation of gold, as the gold did not belong to the passenger, who acted as carrier of gold. The said order of Bombay High Court was upheld by Hon'ble Supreme Court in its decision reported in 2010 (253)ELT E-83 (SC). Appellate Authority in para 7(ii) (b) of the Order-In-Appeal has concluded that only 300 grams of gold out of 1000 grams seized belongs to the passenger. Hence the above case law referred by the department is not a different one from the present case.
- In the case of S. Faisal Khan Vs The Joint Commissioner on 13.09.2010, WP no. 34102 of 2003-Madras High Court has held that "-----The order passed by the original authority, appellate authority and the Revision Authority are cogent and supported by reasons. The authorities recorded the voluntary statement under Section 108 of the Customs Act, 1962 wherein the petitioner had categorically admitted that he was taking the currency clandestinely on behalf of one Abdullah for monetary consideration. This particular evidence was held to be acceptable and cannot be brushed aside and there is no record to show that the statement of the petitioner was recorded under duress/pressure and the same was not voluntary. It is settled legal proposition that statement recorded under Section 108 of the Act, is admissible unlike a statement recorded by a Police Officer.

4.7 That the appellate authority vide para 7(ii) (c) has contended that the facts of the above case are totally different. That in the present case, the passenger in his voluntary statement has admitted that the only 300 grams of gold belongs to him and the balance belong to his roommates. That at the time of personal hearing he retracts his statement and claims ownership of the entire gold seized. That retraction made by him is an afterthought and to show that the statement recorded under Section 108 of the Act, is admissible.

4.8 That in a recent judgement delivered by Hon'ble High Court of Delhi in the case of Ramkumar Vs Commissioner of Customs decided on 16.01.2015 in Review Petition No. 429 of 2014 in WP No. (C) No. 4536 of 2013, reported in 2015 (320) ELT 368 (Del) it was held that benefit of Section 125 of Customs Act, 1962 is not entitled as the applicant was mere carrier of goods and the same did not belong to him.

4.9 That re export of goods is covered in Section 80 of the Customs Act, 1962. That as per the said act, where the baggage of the passenger contains any article which is dutiable or the import of which is prohibited and in respect which a true declaration has been made under the Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India. That in this case, the passenger has not filed any declaration and hence the appellate authority's order to allow the re-export of the gold is not in order.

4.10 That the order of the appellate authority has the effect of making smuggling an attractive proposition, since the passenger retains the benefit of redeeming the offending goods even when caught by Customs which totally works against deterrence.

5. A show cause notice was issued to the respondent under Section 129 DD of the Customs Act, 1962 to enable the respondent to file their counter reply. The respondent vide reply received on 31.08.2015 submitted that grounds raised by the Revision Applicant are not maintainable since the Order-in-Appeal speaks for itself and an opportunity for hearing be given. Meanwhile, respondent filed W.P. No.24230 of 2015 in the High Court of Madras under article 226 of the Constitution of India to issue writ of Mandamus directing the Government authority to implement the order passed by the Commissioner(Appeals-I) Chennai, No. 349-350/2015 dated 29.06.2015. The Hon'ble High Court disposed of the Writ Petition vide its order dated 31.08.2015 which was received in this office on 26.11.2015 with the direction to the petitioner to place all their submissions as to substantiate their case before Revisionary Authority and upon hearing them, Revisionary Authority would pass the order within eight weeks of receiving the order.

6. In compliance of Hon'ble High Court's Order, personal hearing was scheduled in this case on 18.12.2015.

6.1 Shri T. Chezhiyan, Advocate, appeared on behalf of the respondent and made written submission mainly stating that a new ground cannot be involved in the revision stage beyond the Show Cause Notice. The grounds mentioned in Show Cause Notice for confiscating of goods are Section 111(d) & (l) which are

categorically dealt with by the original authority and for confiscation of goods, a notice is to be issued under Section 124.

6.2 The Department vide their fax letter dated 16.12.2015 intimated that their grounds of appeal may be treated as a written submission and the case may be decided based on that. Hence Government proceeds to decide the case.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original, Order-in-Appeal and order of the Hon'ble High Court dated 31.08.2015.

8. On perusal of the records, Government observes that it is an undisputed fact that respondent imported impugned gold bits weighing 1000 grams and attempted to walk through green channel to smuggle it out by way of concealment, by keeping it inside his pant pocket and did not declare the same to the Customs under Section 77 of the Act, *ibid* as required. The gold was recovered only upon the personal search of the respondent. In the statement of the respondent recorded under Section 108 of the Customs Act, 1962, he *inter-alia* admitted that he was working in a private firm in Kuwait for the past 7 years; that only 300 grams of gold bits belonged to him and rest of the quantity belonged to his four friends who were his roommates at Kuwait; that he carried the gold bits by keeping them in his pant pocket without declaring the same to Customs to evade Customs duty; that he knew that he was not an eligible passenger to import gold at the concessional rate of duty and he did not have money to pay Customs duty; that he did not know the address of the above said four persons in India; that it was agreed amongst them that whenever his above said friends visit India, they would collect the gold at his residence after paying him the service charges of Rs. 5000/- per 100 grams; that he knew that bringing gold without valid documents and by not declaring the same to Customs was an offence; that this was his first offence for earning benefit of Rs. 5000/- per 100 grams and requested for leniency. The original adjudicating authority ordered for confiscation of the impugned gold revalued at Rs.25,72,280/- with an option to redeem the same for re-export on payment of fine of Rs.12,50,000/- under Section 125 of the Act, *ibid* or if option to redeem for home consumption to be opted on payment of duty @36.05% in addition to the redemption fine. A personal penalty of Rs.2,50,000 under Section 112(a) & (b) *ibid* was also imposed. An appeal was filed against the Order-in-Original before Commissioner of Customs, Chennai (Appeals-I) by the respondent as well as the Department. While the Order-in-Appeal rejected Department's appeal, it allowed re-export of the impugned gold on reduced redemption fine of Rs. 6,00,000/- under Section 125 *ibid* 1962 and upheld the penalty of Rs. 2,50,000/- imposed under Section 112 by the adjudicating authority. Aggrieved by the said Order, the Department has filed Revision Application on grounds stated in para 4.

9. Government observes that the Commissioner (Appeals) has held that ownership is not disputed, the passenger has no previous offence and that goods were not concealed in any ingenious manner and, therefore, allowed re-export on reduced redemption fine. The Department on the other hand has contended that it cannot be ignored that it is a fact on record that the passenger who is not eligible to import gold, walked through the green channel at the Airport and had he not been intercepted he would have walked away with the impugned goods without declaring the same to Custom. The main contention of the Department is that the passenger has accepted that he was carrying the gold for monetary consideration and had obviously concealed the gold and the same had not been declared in the customs declaration card. The passenger has also not fulfilled the conditions stipulated under Notification No.12/2012-Cus dated 17.03.2012 as amended and Rule 6 of the Baggage Rules. Therefore, it is pleaded that the passenger was not eligible to import the gold and accordingly the impugned Order-in-Appeal allowing redeeming of the goods on re-export is unlawful and has the effect of making smuggling an attractive proposition and be set aside.

10. Government observes that it is an uncontested fact that the goods were not declared to the customs under Section 77 of the Act and the passenger passed through the green channel. Even upon being questioned if he had anything to declare, he answered in the negative including before his personal search was conducted. However, upon his person search 1000 grams of gold bits were recovered of which he claimed only 300 grams. belonged to him and rest he was carrying on behalf of others for a monetary consideration which he later claimed also belonged to him as the actual owners owed money to him. It is also uncontested that the passenger has also not fulfilled the conditions of Notification No.12/2012-CUS dated 17.03.2012 and nor was he entitled to import the impugned gold under Rule 6 of the Baggage Rules (which allows import of 22 carat personal gold jewellery up to Rs.50,000/- for male passengers).

11. Before dealing with the issue further Government proceeds to examine as to whether the import of the impugned gold is prohibited or not.

11.1 Prohibited goods have been defined in Section 2(33) of the Customs Act, 1962 as under:-

2(33) - Definitions - "Prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

11.2 The Apex Court in the case of Om Prakash Bhatia vs. Commissioner of Customs Delhi 2003 (155) ELT 423 (SC) has categorically held that if there is any prohibition of import or export of goods under the Customs Act 1962 or any other

law for the time being in force the goods would be considered to be prohibited goods and this prohibition would also operate on such goods the export or import of which is subject to certain prescribed condition if the conditions are not fulfilled. Further, in the case of Samynathan Murugesan Vs. Commissioner 2010 (254) ELT A15 SC, the Hon'ble Supreme Court has held that as the passenger did not fulfil the eligibility criteria, it makes the imported gold prohibited goods.

11.3 Since the respondent was not eligible to import gold and that too undeclared and in a substantial quantity, the same cannot be treated as *bona fide* baggage in terms of Section 79. The said gold is imported in violation of the Foreign Trade Policy; provisions of Section 77, 79, 11 of Customs Act 1962; para 2.20 of Exim Policy of 2009-14 and provisions of Section 3(3) and 11(1) of Foreign Trade (Development & Regulation) Act, 1992. Government holds that impugned goods constitute "prohibited goods" liable to confiscation under Section 111(d) and (l) of the Customs Act, 1962.

12. In view of the above, as regards plea for absolute confiscation of the impugned goods, Government finds that the same is in order keeping in view the conduct of the applicant in not declaring the impugned goods and attempting to pass through the green channel. It is fact on record that even when questioned by officers whether he has any gold or contraband items, he answered in the negative. Had the applicant desired to import the gold as an eligible passenger, he ought to have approached the Customs and made the requisite declaration. Therefore, Government upholds the Department's contention that absolute confiscation is legally warranted keeping in view the facts and circumstances of the case.

13. Another issue of contention in this regard is whether the passenger is a carrier of the impugned goods or not. Based on his admission statement, the Department has contended that the passenger is nothing but a carrier. The Commissioner (Appeals) on the other hand, has held that this was not alleged in the Show Cause Notice and also that part of the gold belonged to the respondent. There is no dispute about the fact that the respondent in his statement has clearly admitted that only 300 grams gold belonged to him and rest belonged to his roommates at Kuwait, that they would collect it from him in India after paying service charge of Rs.5000/- per 100 grams. The fact that the passenger is not the owner of the goods has been clearly brought out in para 2 of the Show Cause Notice. Government finds no merit in the contention of both the Commissioner (Appeals) and the respondent that the ground that the passenger is a carrier is not part of the Show Cause Notice and, therefore, cannot be raised at a later stage.

14. Further, Government notes that Hon'ble High Court of Bombay in its judgment dated 23-07-2009 in the case of UOI Vs Mohammed Aijaj Ahmed (WP No.1901/2003) reported as 2009 (244) ELT 49 (Bom.) has set aside the order of CESTAT ordering to allow redemption of gold and upheld the absolute confiscation of gold ordered by Commissioner of Customs. In this case the gold did not belong to passenger Mr. Mohammed Aijaj Ahamed who acted as carrier of gold. The said order of Bombay High Court was upheld by Hon'ble Supreme Court in its decision reported in 2010 (253) ELT E83 (SC). Further the Hon'ble High Court of Chennai in the case of S. Faisal Khan vs. Joint Commissioner of Customs (Airport) Chennai 2010 (259) ELT 541 (Mad) upheld absolute confiscation of goods carried on behalf of someone else for a monetary consideration. In the case of Ram Kumar Vs. Commissioner of Customs 2015 (320) ELT 368 (Del) also the Hon'ble High Court of Delhi has held that carrier is not entitled to benefit of Section 125 of Customs Act, 1962. Government, therefore, holds that even the gold imported by a passenger as a carrier is liable for absolute confiscation as pleaded by the Department.

15. Further, the subsequent claim of the respondent that the gold of his roommates also belonged to him as they owed money to him is clearly an afterthought. He had already admitted in his voluntary statement dated 05.03.2014 that only part of the gold belonged to him and rest had been carried for his roommates for a monetary consideration.

15.1 In this regard, Government also notes that the statement recorded before the Customs officers is valid evidence. Hon'ble Supreme Court has held in the case of Surjeet Singh Chhabra Vs. Union of India 1997(89) ELT 646 (SC) that statement made before Customs officers though retracted within six days is an admission and binding since Customs officers are not police officers under Section 108 of Customs Act 1962. A similar view has been taken by the Apex Court in Naresh J. Sukhawani Vs Union of India 1996(83) ELT 258(SC) holding that statement before a Customs Officer under Section 108 of the Customs Act 1962 is a material piece of evidence. Further, same stand was taken by the Hon'ble High Court of Madras in the case of S. Faisal Khan vs. Joint Commissioner of Customs (Airport) Chennai 2010 (259) ELT 541 (Mad). So the statement given before Customs is valid evidence and subsequent submission is only an afterthought in an attempt to get goods released on payment of fine.

16. Government further finds that the provision for re-export of baggage is available under Section 80 of the Customs Act, 1962. However, this Section is applicable only to cases of bonafide baggage declared to Customs, which the applicant failed to do, thus the applicant is not eligible for re-export of impugned goods. In similar circumstances, Central Government has denied re-export of goods

in the case of Hemal K Shah 2012(275)ELT 266 (GOI). Further, the Apex Court in the case of CC Kolkata Vs Grand Prime Ltd 2003 (155) ELT 417 (SC) has supported the view that the goods which are liable for confiscation cannot be allowed to be re-exported. There is force in Department's contention that the allowing to redeem the offending goods even when caught and then allow re-export makes smuggling an attractive proposition. Hence, the Government is of the view that the order of Commissioner (Appeals) allowing the request of the respondent for re-export of goods is not legal and proper and cannot be allowed.

17. Government also finds no force in the plea of the respondent that the confiscation of the impugned goods is not valid as any Show Cause Notice for confiscation of the goods is to be issued under Section 124 only and present notice mentions 111(d) & (l), as the Show Cause Notice clearly mentions in the beginning and in the concluding para that it is issued under Section 124 of the Customs Act, 1962.

18. In view of the position explained above, Government finds that the Commissioner (Appeals) has erred in allowing re-export of the impugned goods on payment of redemption fine and therefore, Government allows the Department's plea for absolute confiscation of the impugned goods. The impugned Order-in-Appeal is modified to this extent.

19. Revision application is thus allowed in above terms.


20. So ordered.


(RIMJHIM PRASAD)

Joint Secretary to the Govt. of India

Commissioner of Customs Chennai-I
(Airport & Aircargo)
New Custom House
GST Road, Meenambakkam,
Chennai – 600 027.

ATTESTED


Under Secretary (RA)

ORDER NO. 01/2016-CUS DATED 22.01.2016

Copy to:

1. Shri S. Moinuddin, S/o Shri Syed Shabuddin, D.No: 4/587, Opp. SBI Road, Kadappa, Kadappa District, Andhrapradesh.
2. The Commissioner of Customs, (Appeals-I), Chennai.
3. Shri T. Chézhiyan, Advocate, No.8 Edams Road, Alwarpet, Chennai-600027.
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

(SHAUKAT ALI)
UNDER SECRETARY (RA)

श्री शाकत अली
अधीनस्थ सचिव (रा)
Under Secretary (RA)