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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 380/87/B/16-RA 2410

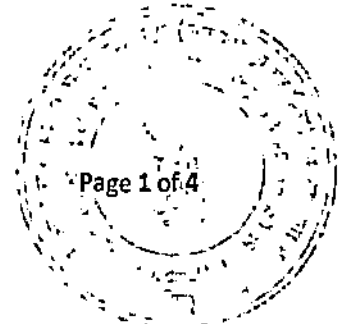
Date of Issue 19/12/2018

ORDER NO. 161/2018-CUS (SZ)/ASRA/MUMBAI DATED 30.11.2018 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 : Commissioner of Customs, Trichy.

Respondent: Shri Maheshwaran

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 25/2016 TRY (CUS) dated 10.02.2016 passed by the Commissioner of Customs (Appeals), Trichy.



ORDER

This revision application has been filed by Commissioner of Customs, Trichy. (herein after referred to as the Applicant) against the order in appeal No. 25/2016 TRY (CUS) dated 10.02.2016 passed by the Commissioner of Customs (Appeals), Trichy.

2. Briefly stated the facts of the case are that the applicant arrived at the Trichy International Airport on 11.07.2015. Examination of his baggage and person resulted in the recovery of one gold chain weighing 149.4 grams, Rs. 3,66,680/- ( Rupees Three Lakhs Sixty six thousand Six hundred and Eighty ).

3. The Original Adjudicating Authority vide Order-In-Original No. 306/2015 dated 11.07.2015 ordered absolute confiscation of the gold chain and the cigarettes and tobacco. A penalty of Rs. 37,000/- was also imposed under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the respondent filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 25/2016 TRY (CUS) dated 10.02.2016 allowed redemption of the gold on payment of redemption fine of Rs. 1,40,000/- and applicable duty and allowed the appeal of the respondent, without interference in the penalty imposed.

5. Aggrieved with the above order the Applicant department have filed this revision application disputing the release of the gold, interalia on the grounds that;

5.1 The gold brought by the Applicant is not his bonafide baggage and he carried the gold for someone else; the respondent did not declare the gold as required contravened the section 77 of the Customs Act, 1962 with an intention to evade customs duty and has therefore contravened the provisions of the Customs Act, 1962; These reasons make the gold prohibited; The act of not declaring the gold and his negative reply during oral interrogation reveals his intention to clear the gold without the payment of duty; Overriding the above vital reasons the Commissioner (Appeals) has allowed the gold for redemption is because the Respondent had stayed abroad for 232 days; The order in Appeal permitting the smuggled gold to be redeemed is not proper; The discretion under section



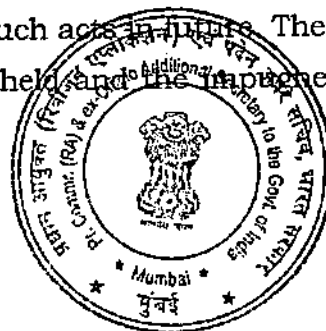
125 is not an absolute discretion and has to be exercised only based on the facts and circumstances of the case; These reasons make the gold prohibited; Therefore the decision of the Appellate authority to release the gold has erred in modifying the order in original in releasing the gold is not proper and legal.

5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority or any such order as deemed fit.

6. In view of the above, the Respondent was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled on 24.08.2018, 04.10.2018 and 14.10.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided ex parte on merits.

7. Government has gone through the facts of the case, the respondent had attempted to import the gold without declaration and therefore confiscation of the same is justified and upheld.

8. However, the facts of the case state that there is no allegation that Respondent had cleared or attempted to clear the Green Channel. There is no allegation that the gold was ingeniously concealed. Import of gold is restricted not prohibited. There is no reference of any previous offence registered against the respondent. The respondent claims ownership of the gold. Under the circumstances the absolute confiscation of the seized with the gold is harsh and unjustified. 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 regard to goods that are not strictly prohibited. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Government also notes that the redemption fine and penalties is commensurate to the offence committed so as to dissuade such acts in future. The impugned Order in Appeal therefore is liable to be upheld and the impugned Revision Application is liable to be dismissed.



9. Government therefore upholds the Order in Appeal No. 25/2016 TRY (CUS) dated 10.02.2016 passed by the Commissioner of Customs (Appeals), Trichy as being legal and proper.

10. The Revision Application is accordingly dismissed.

11. So, ordered.

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

ORDER No. <sup>1071</sup> /2018-CUS (SZ) /ASRA/MUMBAI DATED 30.11.2018

To,

1. The Commissioner of Customs (Airport),  
International Airport,  
Sempattu, Trichy -620 007.

2. Shri Maheshwaran  
S/o Bose Kadampatty,  
Karunkalakudi (Post),  
Melur (Tk),  
Madurai - 625 101.

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

