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GOVERNMENT OF INDIA
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)
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F.No. 380/26/B/16-RA

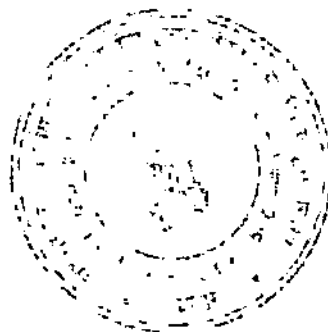
Date of Issue 13/12/2018

ORDER NO. ¹⁰⁵¹ /2018-CUS (S Z) / 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 (Airport) Chennai.

Respondent : Smt. H. A. Mary Violet Rodrigo

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus-I No.
570/2015 dated 28.09.2015 passed by the Commissioner of
Customs (Appeals-I), Chennai.



ORDER

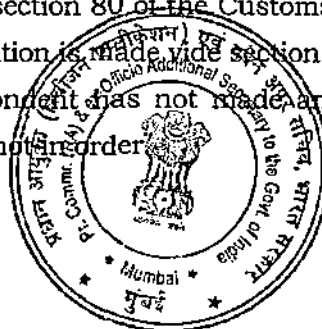
This revision application has been filed by Commissioner of Customs, Chennai, (herein referred to as Applicant) against the Order in Appeal No. C. Cus-I No. 570/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. On 16.12.2014 the respondent a Sri Lankan National was intercepted at the Chennai Airport as she was walking out of the green Channel and Two gold chains, Five pendants and four gold rings totally weighing 731.3 grams valued at Rs. 19,37,785/- (Rupees Nineteen lakhs Thirty seven thousand Seven hundred and Eighty five) was recovered from her hand baggage. After due process of the law vide Order-In-Original No.36/2015-16 AIRPORT dated 25.04.2015 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) and (l) of the Customs Act, 1962, but allowed redemption of the same for re-export on payment of redemption fine of Rs. 7,25,000/- and imposed penalty of Rs. 2,00,000/- under Section 112 (a) of the Customs Act, 1962 on the Respondent.

3. Aggrieved by the said order, the Department filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus-I No. 570/2015 dated 28.09.2015 rejected the Appeal of the Department.

4. Aggrieved with the above order the Applicants have filed this revision application inter alia on the grounds that;

4.1 The Order of the original adjudicating authority and the order of the Commissioner (Appeals) are both neither legal nor proper as the passenger had attempted to smuggle the gold by way of deep concealment in her knotted handkerchief kept in the handbag carried by her; The respondent had a culpable mind to smuggle the gold circumventing the restrictions and prohibitions imposed; In her voluntary statement she stated that the gold did not belong to her and she had carried the same for another person for monetary gains; The retraction of the statement is an after thought to secure release of the gold. The respondent did not declare the gold as required contravened the section 77 of the Customs Act, 1962 and as she was not in possession of foreign currency to pay Customs duty the gold under import becomes prohibited; Therefore allowing re-export instead of absolute confiscation is not correct; Re-export of the gold is covered vide section 80 of the Customs Act, 1962, and is mandated only when a true declaration is made vide section 77 of the Customs Act, 1962. In this case the Respondent has not made any declaration and therefore the order for re-export is not in order.



5.2 The Revision Applicants cited case laws in support of their case and prayed that the order of the Appellate authority and the order of the Lower adjudication authority be set aside or such an order as deemed fit.

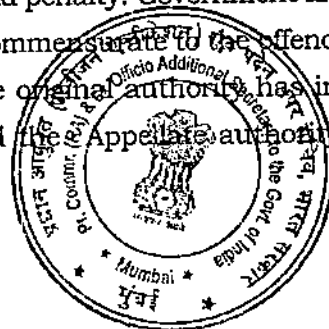
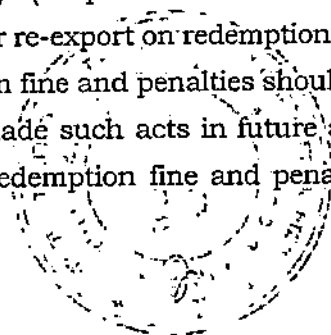
5. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled on 27.08.2018, 17.09.2018 and 26.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided ex parte on merits.

6. The Government has gone through the case records, the Respondent had not declared the gold as required under section 77 of the Customs, Act, 1962, and therefore the confiscation of the gold is justified.

7. However, it is observed that the gold was recovered from a pouch which was wrapped in a handkerchief and kept in the Respondents hand baggage and cannot be considered as indigenously concealed. The case of the Appellants is that the Respondent is not the owner of the gold and that she did not have the foreign currency to pay custom duty. However, import of gold is restricted not prohibited. The gold is not in primary form. There is no allegation that the Respondent has any past history of such misdemeanors.

8. Further, 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 and release the goods to the owner, and where such owner is not known, the person from whose possession or custody such goods have been seized. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is a very harsh option and cannot be justified and therefore prompts the Government to take a lenient view in the matter. The Respondent being a foreign citizen redemption of the gold for re-export is appropriate.

9. The Government therefore is inclined to agree with the Order-in-Appeal upholding the order in original in allowing the gold weighing 731.3 grams valued at Rs. 19,37,785/- (Rupees Nineteen lakhs Thirty seven thousand Seven hundred and Eighty five) for re-export on redemption fine and penalty. Government also notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future and the original authority has imposed right quantum of redemption fine and penalty and the Appellate authority has rightly



rejected the appeal of the department. The Revision application is therefore liable to be dismissed.

10. Revision application is accordingly dismissed.

11. So, ordered.

(Handwritten Signature)
30.11.18

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

ORDER No. ¹⁰⁵¹/2018-CUS (SZ) /ASRA/ MUMBAI

DATED 30.11.2018

To,

1. Commissioner of Customs,(Airport) Chennai,
Anna International Airport,
Meenambakkam, Chennai.

elg 2. Smt. H. A. Mary Violet Rodrigo
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai 600 001.

Copy to:

3. The Commissioner of Customs (Appeals-I), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
- ~~5. Guard File.~~
6. Spare Copy.

