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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 383/56/B/16-RA

2/15

Date of Issue 19/12/2018

ORDER NO. ¹⁰⁶² /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, Chennai.

Respondent : Shri Mohamed Omar Shaik

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus-I
No. 727/2015 dated 30.11.2015 passed by the
Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs, Chennai (herein after referred to as the Applicant) against the order in appeal C. Cus-I No. 727/2015 dated 30.11.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the Respondent arrived at the Anna International Airport on 20.04.2015. He was intercepted as he was walking out of the exit. Examination of his baggage and person resulted in the recovery of three gold bars totally weighing 233 grams, Rs. 6,30,032/- (Rupees Six lakhs Thirty thousand and Thirty two). The gold was recovered from the pockets of the pants worn by Respondent.

3. The Original Adjudicating Authority vide Order-In-Original No. 281/2015-16 AIRPORT dated 11.09.2015 ordered absolute confiscation of the gold, and imposed a penalty of Rs. 60,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the Respondent filed an Appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 727/2015 dated 30.11.2015 allowed redemption of the gold for re-export on payment of redemption fine to Rs. 1,80,000/- without interfering with the penalty imposed.

5. Aggrieved with the above order the Applicant department have filed this revision application, inter alia on the grounds that;

5.1 The order of the Commissioner (Appeals) is neither legal nor proper as the Applicant had brought the gold by way of concealment and non-declaration; the passenger failed to make a declaration as required under section 77 of the Customs Act, 1962; He has not fulfilled any conditions making him eligible to import gold and he did not have the foreign currency as required to pay customs duty; Therefore the impugned gold becomes prohibited; The Respondent therefore is not entitled for the

benefit of section 125 of the Customs Act, 1962 and therefore release of goods for re-export to the respondent is bad in law; The passenger claims to be the owner of the gold but has failed to produce evidence of



his financial soundness; In this case the Respondent has not made any declaration and therefore the order for re-export is not in order; The orders of the lower authorities has the effect of making smuggling an attractive proposition, since the passenger retains the benefit of redeeming the offending goods at lower redemption fine.

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

6. 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 held on 24.08.2018 and 12.09.2018. However, neither the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided exparte 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 the gold was recovered from his pant pockets and though concealed it cannot be considered as ingeniously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. There is no reference of any previous offence registered against the respondents. 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 prohibited. 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. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. Government observes that the redemption fine of Rs. 1,80,000/- (Rupees One lakh Eighty thousand) and penalty of Rs. 60,000/- (Rupees Sixty thousand) imposed on the gold weighing 233 grams valued at Rs. 6,30,032/- (Rupees Six lakhs Thirty



thousand and Thirty two) to be appropriate. In view of the above Order in Appeal is required to be upheld and the impugned revision Application is liable to be dismissed.

10. Revision application is accordingly dismissed.

11. So, ordered.

(Handwritten signature)

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

ORDER No. ¹⁰⁶² /2018-CUS (SZ) /ASRA/MUMBAI, DATED 30.11.2018

To,

1. The Commissioner of Customs (Airport),
Anna International Airport,
Meenambakkam,
Chennai - -600 027.
2. Shri Mohamed Omar Shaik
15/91 Balla Mithai Street,
Kadappa - 516 001.
Tamil Nadu.
3. The-Commissioner of Customs (Appeals), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

