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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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F.No. 380/88/B/16-RA / 2019

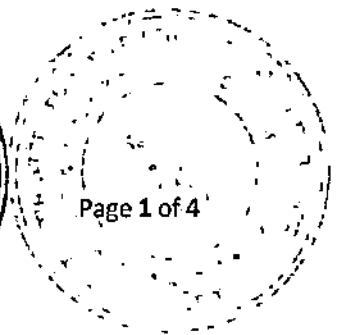
Date of Issue 19/12/2018

ORDER NO. ¹⁰⁶⁵ /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 : Shri Aswak Hussain

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 873/2015 dated 23.12.2015 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. 873/2015 dated 23.12.2015 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 17.01.2014. Examination of his baggage and person resulted in the recovery of three gold pieces weighing 810 grams, valued at Rs. 20,50,547/- (Rupees Twenty Lakhs Fifty thousand Five hundred and Forty seven). The gold was recovered from the perfume bottle box from the baggage of the Respondent.

3. The Original Adjudicating Authority vide Order-In-Original No. 150/18.06.2015 ordered confiscation of the gold, but allowed redemption of the same for re-export on payment of Rs. 10,25,000/-. A penalty of Rs. 2,00,000/- 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 C. Cus-I No. 873/2015 dated 23.12.2015 reduced the redemption fine to Rs. 5,00,000/- and also reduced the penalty to Rs. 1,00,000/- and allowed the Appeal of the Respondent.

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

5.1 Both the Order in original and the order of the Commissioner (Appeals) is neither legal nor proper as the Applicant had brought the gold by way of concealment in his baggages 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; Being ineligible, the gold brought by the Applicant becomes prohibited; The respondent has not furnished any documents for purchase of the gold and therefore one cannot come to the conclusion that he is the owner of the gold; 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. 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 even when caught by the customs which totally works against deterrence; at lower redemption fine.



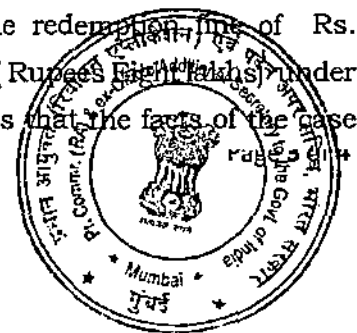
5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority and the order in original be upheld or such an order as deemed fit.

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, 12.09.2018 and 03.10.2018. However, neither the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided ex parte on merits.

7. Government has gone through the facts of the case, the respondent had attempted to import the gold without declaration as required under section 77 of the Customs Act, 1962 and therefore confiscation of the same is justified and upheld.

8. However, the facts of the case state that there are no allegations that the Respondent had tried to clear the Green Channel. The gold was recovered from a perfume box kept in his baggage and it cannot be considered as ingeniously concealed. Import of gold is restricted not prohibited. Apart from the respondent, there are no other claimants for the impugned gold. 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. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. 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 for re-export 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. The gold though not ingeniously concealed, was required to be declared as per section 77 of the Customs, Act, 1962 and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore needs to be set aside.

9. The impugned Order in Appeal is set aside. The impugned gold weighing 810 grams, valued at Rs. 20,50,547/- (Rupees Twenty Lakhs Fifty thousand Five hundred and Forty seven) is allowed to be redeemed for re-export. The redemption fine of Rs. 5,00,000/- (Rupees Five lakhs) is increased to Rs. 8,00,000/- (Rupees Eight Lakhs) under section 125 of the Customs Act, 1962. Government observes that the facts of the case



justify an increase in the penalty imposed. The penalty of Rs. 1,00,000/- (Rupees One lakh) imposed on the Respondent is increased to Rs. 2,00,000/- (Rupees Two lakhs) under section 112(a) of the Customs Act,1962. The same is upheld.

10. Revision application is partly allowed on above terms.

11. So, ordered.

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ¹⁰⁶⁵ /2018-CUS (SZ) /ASRA/MUMBAI.

DATED 30-11-2018

To,

1. Commissioner of Customs, (Airport) Chennai,
New Custom House, Meenambakkam, Chennai-600 027.

2. Shri Aswak Hussain
C/o Shri Mohamed Ali,
8/1226, Agadi Street,
Kaddapah District,
Andhra Pradesh 516 001.

Copy to:

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

