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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. 380/93/B/16-RA / 2418

Date of Issue 19/12/2016

1065
ORDER NO. /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 Tawa Dilip Kumar Reddy

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 07/2016 dated 29.01.2016 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. 07/2016 dated 29.01.2016 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 27.03.2015. Examination of his baggage and person resulted in the recovery of one gold bit weighing 489 grams, valued at Rs. 13,29,591/- (Rupees Thirteen Lakhs Twenty Nine thousand Five hundred Ninety one). The gold was recovered from the pockets on the pants worn by the Respondent.
3. The Original Adjudicating Authority vide Order-In-Original No. 283/2015-16 AIRPORT dated 11.09.2015 ordered confiscation of the gold, but allowed redemption of the same for re-export on payment of Rs. 6,50,000/-. A penalty of Rs. 1,30,000/- was also imposed under Section 112 (a) of the Customs Act.
4. Aggrieved by the said order, the Respondent as well as the department both filed an Appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus-I No. 07/2016 dated 29.01.2016 rejected the Appeal filed by the department as devoid of merits.
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 Respondent had brought the gold by way of concealment in specially stitched pockets in her brassiere and non-declaration; the passenger failed to make a declaration as required under section 77 of the Customs Act, 1962; She has not fulfilled any conditions making him eligible to import gold; Being ineligible the gold brought by the Applicant becomes prohibited; In such cases the seized gold needs to be confiscated absolutely and re-export should not be given. The Respondent has in her statement stated that the gold was given to her by one Shri Moideen Bhai to be taken to India for a monetary consideration of Rs. 2000 Singapore dollars; 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; 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 her brassiere 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. Government observes that the redemption fine of Rs. 6,50,000/- (Rupees Six lakh Fifty thousand) and penalty of Rs. 1,30,000/- (Rupees Sixty thousand) imposed on the gold weighing 489 grams valued at Rs. 13,29,591/- (Rupees Thirteen Lakhs Twenty Nine thousand Five hundred Ninety one) 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.

(Signature)
20/11/18

(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) Trichy,
Williams Road, Cantonment, Trichy.
2. Shri Tawa Dilip Kumar Reddy
Thavvavandlapalli,
Tettupalle,
Chinnagottigallu Mandalam,
Bakrapet,
Andhra Pradesh.

Copy to:

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

