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MINISTRY OF FINANCE
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F.No. 380/52/B/16-RA

24/12

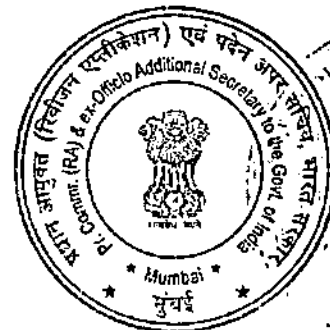
Date of Issue 19/12/2018

ORDER NO. 1869 /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 Rishad

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 390/2015 dated 03.07.2015 and C. Cus-I No. 678/2015 dated 30.10.2015 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. 390/2015 dated 03.07.2015 and C. Cus-I No. 678/2015 dated 30.10.2015 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 23.01.2015. Examination of his baggage and person resulted in the recovery of one gold chain and one gold ring totally weighing 186 grams, Rs. 4,64,671/- (Rupees Four Lakhs Sixty four thousand Six hundred and Seventy one). The gold ring was recovered from his back pocket and the gold chain was recovered from his under garments worn by him.

3. The Original Adjudicating Authority vide Order-In-Original No. 156/2015-16 AIRPORT dated 22.06.2015 ordered confiscation of the gold, but allowed redemption of the same on payment of Rs. 1,70,000/-. A penalty of Rs. 50,000/- 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. 390/2015 dated 03.07.2015 reduced the redemption fine to Rs. 70,000/- and also reduced the penalty imposed to Rs. 25,000/- on the Respondent. The Applicant department also filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 678/2015 dated 30.10.2015 dismissed the Appeal as infructuous.

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 deep concealment and non-declaration; the passenger failed to make a declaration as required under section 77 of the Customs Act, 1962;

5.2 The Respondent has not fulfilled any conditions making him eligible to import gold; The Respondent has in his statement stated that the gold does not belong to him and therefore is not entitled for the benefit of section 125 of the



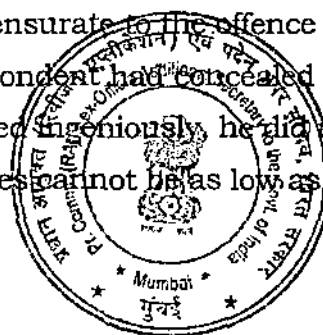
Customs Act,1962 and therefore release of the goods to someone not the owner is bad in law; Re-export is specifically covered under section 80 of the Customs Act and re-export is permissible only if a true declaration is made under section 77 of the Customs Act,1962; The retraction given by the Respondent is an after thought; Since the appeals filed by the Respondent and the department are on different grounds the Appellate authority dismissing the departments Appeal is neither legal and proper;

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 17.01.2018, 21.02.2018 and 16.08.2018. 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 and therefore confiscation of the same is justified and upheld.

8. However, the facts of the case state that the Applicant had not cleared the Green Channel. The gold was recovered from his pant pockets and under garments 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. 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. The Respondent had concealed the gold in his pant pockets and though it was not concealed ingeniously, he did not declare it and therefore the redemption fine and penalties cannot be as low as ordered in

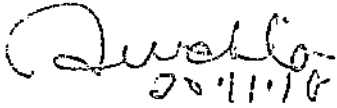


the order in Appeal. The redemption fine and penalties imposed by the Original adjudicating Authority is appropriate. The impugned Order in Appeal therefore needs to be set aside and the Order in Original is liable to be upheld.

9. Government therefore sets aside the Order in Appeal C. Cus-I No. 390/2015 dated 03.07.2015 and C. Cus-I No. 678/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai. The Order-In-Original No. 156/2015-16 AIRPORT dated 22.06.2015 issued by the Original Adjudicating Authority is upheld as legal and proper.

10. The Revision Application is allowed on above terms.

11. So, ordered.



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

ORDER No. ¹⁰⁶⁹/2018-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 Rishad
C/o A. Ganesh, Advocate
179, F Block,
Anna Nagar (E) East,
Chennai - 600 -102.
3. The Commissioner of Customs (Appeals), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

