



GOVERNMENT OF INDIA
MINISTRY OF FINANCE

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

F.No. 380/58/B/16-RA

Date of Issue 20/12/2018

ORDER NO. ¹⁰⁸¹ /2018-CUS (5 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. Mutamah

Subject : Revision Application filed, under Section 129DD of the Customs
Act, 1962 against the Order-in-Appeal C. Cus-I No. 861 &
862/2016 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. 861 & 862/2016 dated 23.12.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

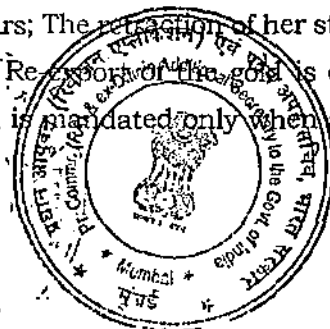
2. Briefly stated the facts of the case are that the Respondent a Singapore national arrived at the Anna International Airport on 23.04.2014. Examination of her baggage and person resulted in the recovery of Ten gold bars weighing 1000 grams, valued at Rs. 26,20,480/- (Rupees Twenty six Lakhs Twenty thousand Four hundred and Eighty). The gold was recovered from the brassiere worn by the Respondent.

3. The Original Adjudicating Authority vide Order-In-Original No. 149/18.06.2015 ordered confiscation of the gold, but allowed redemption of the same for re-export on payment of Rs. 13,00,000/-. A penalty of Rs. 2,50,000/- 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. 861 & 862/2016 dated 23.12.2015 reduced the redemption fine to Rs. 6,00,000/- and also reduced the penalty to Rs. 1,50,000/- and 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; The retraction of her statement is only for escape from the clutches of the law; 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



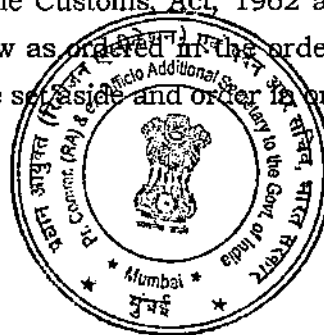
section 77 of the Customs Act, 1962. In this case the Respondent has not made any declaration and therefore the order for re-export is not in order; The orders of the lower authorities has the effect of making smuggling an attractive proposition, since the passenger retains the benefit of redeeming the 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.

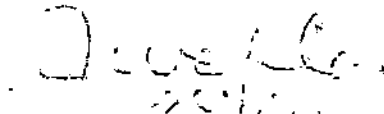
8. However, the facts of the case state that there are no allegations that the Respondent had tried to clear the Green Channel. The gold was recovered from her brassiere and it cannot be considered as ingeniously concealed. Import of gold is restricted not prohibited. Apart from the respondent, there 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 view of the above facts, the Government is of the opinion that absolute confiscation of the currency is a very harsh option and cannot be justified. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the currency 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 and order in original is liable to be restored.



8. The impugned Order in Appeal is accordingly set aside and the order passed by the original adjudicating authority no 149/18.06.2015 is restored.

9. 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. ¹⁰⁸¹ /2018-CUS (SZ) /ASRA/mumbai

DATED 30.11.2018

To,

1. Commissioner of Customs,(Airport) Trichy,
Williams Road, Cantonment, Trichy.

2. Smt. Mutamah
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-II), Trichy.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

