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

F.No. 380/81/B/16-RA /2469 Date of Issue 20/12/2018

ORDER NO.110/2018-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 Jayakumar

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. CUS-I No. 569/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

भारत सरकार (पुनरीक्षण एप्लीकेशन) एवं पदेन अपर सचिव, भारत सरकार
Pr. Commr. (RA) & ex-Officio Additional Secretary to the Govt. of India
Mumbai
मुंबई

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. 569/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the Respondent arrived at the Chennai International Airport on 09.07.2015. He was intercepted as he attempted to pass through the green channel and examination of his person resulted in the recovery of one gold chain weighing 119 grams, valued at Rs. 2,92,068/- (Rupees Two Lakhs Ninety two thousand and Sixty eight).The gold was recovered from the pockets of the pants worn by him.

3. The Original Adjudicating Authority vide Order-In-Original No. 719/2015 Batch D dated 09.07.2015 ordered absolute confiscation of the gold chain and imposed penalty of Rs. 30,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the Respondent an appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. CUS-I No. 569 dated 28.09.2015 allowed redemption of the gold on payment of Rs. 90,000/- and also reduced the penalty to Rs. 25,000/- under Section 112 (a) of the Customs Act 1962.

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

5.1 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 pant pockets and non-declaration; the passenger failed to make a declaration as required under section 77 of the Customs Act,1962; The passenger had attempted to smuggle the goods by way of non declaration knowing well that he was committing an offence and thus had a culpable mind to smuggle them into India without payment of duty; The order of the Commissioner (Appeals) in granting redemption and re-export overlooks the fact that the passenger had contravened the

provisions of the Customs Act,1962. Non-bonafide baggage is treated as prohibited goods as per section 11 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; 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 may have the effect of redeeming the offending goods, not owned by the passenger and it will work against deterrence.

5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority or any 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 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 there is no allegation that Respondent had cleared the Green Channel when intercepted. The gold was recovered from the pockets of the pants worn by him and it was not ingeniously concealed. Import of gold is restricted not prohibited. There is no reference of any previous offence registered against the respondent. The respondent claims ownership of the gold. Under the circumstances the absolute confiscation of the seized gold is harsh and unjustified. 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 strictly prohibited. The Government therefore is

inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty for . Government also notes that the redemption fine of Rs. 90,000/- (Rupees Ninety thousand) and penalty of Rs. 25,000/- (Rupees Twenty Five thousand) on gold weighing 119 grams, valued at Rs. 2,92,068/- (Rupees Two Lakhs Ninety two thousand and Sixty eight) commensurate to the offence committed so as to dissuade such acts in future. The impugned Order in Appeal therefore is liable to be upheld and the impugned Revision Application is liable to be dismissed.

9. Government therefore upholds the Order in Appeal C. CUS-I No. . 569/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai as being legal and proper.

10. The Revision Application is accordingly dismissed.

11. So, ordered.

30.11.18

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

ORDER No. 1102/2018-CUS (SZ) /ASRA/MUMBAI DATED 30.11.2018

To,

1. The Commissioner of Customs (Airport), Chennai.

2. Shri Jayakumar
S/o Somu Thevar,
2/216, West Street,
Alangottai PO,Mannarguddi Tk,
Thiruvarur.

ATTESTED

30/11/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

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