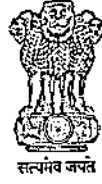


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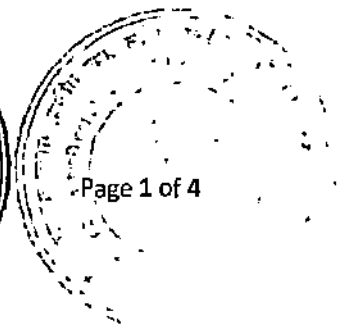
Date of Issue 20/12/18

ORDER NO. 1104/2018-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 Babu Derangula

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. CUS-I No. 744/2015 dated 21.12.2015 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. 744 dated 21.12.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the Respondent a Sri Lankan citizen arrived at the Chennai International Airport on 03.10.2015. He was intercepted as he attempted to pass through the green channel and examination of his person resulted in the recovery of one gold bit weighing 50 grams, valued at Rs. 1,21,716/- (Rupees One Lakh Twenty one Seven hundred and Sixteen).The gold was recovered from the under garments worn by him.

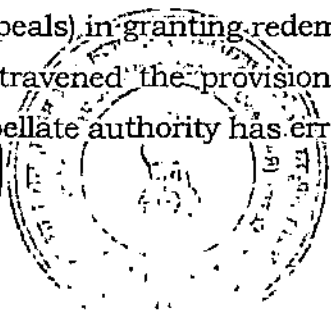
3. The Original Adjudicating Authority vide Order-In-Original No. 719/2015 Batch D dated 03.10.2015 ordered absolute confiscation of the gold bit and imposed penalty of Rs. 13,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the Respondent an appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. CUS-I No. 744 dated 21.12.2015 allowed redemption of the gold on payment of Rs. 40,000/- and also reduced the penalty to Rs. 10,000/- 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 of the Commissioner (Appeals) is neither legal nor proper as the Applicant had brought the gold by way of concealment in his undergarments and non-declaration; The eligibility of the passenger is covered under notification no. 12/2012 Cus dated 17.03.2012 as amended; Further Rule 6 of the baggage rules, 1998 stipulate that a male passenger who has stayed abroad for more than one year is eligible to import gold worth Rs. 50,000/-. The passenger does not fulfill any of the conditions and therefore fails the eligibility criteria; The order of the Commissioner (Appeals) in granting redemption overlooks the fact that the passenger had

contravened the provisions of the Customs Act,1962 and therefore the Appellate authority has erroneously passed the order for redemption of the



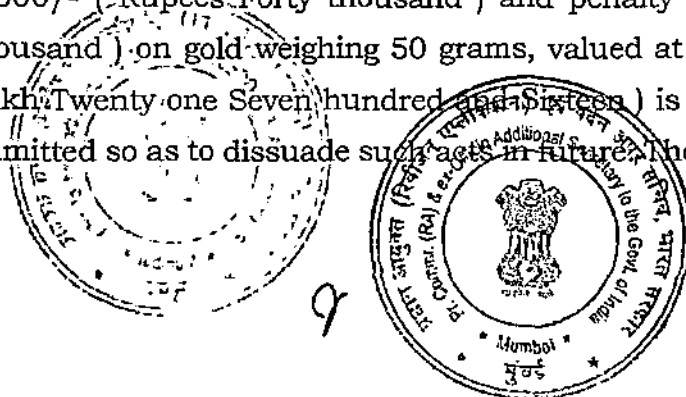
gold which is not sustainable under law; The orders of the lower authorities may have the effect of making smuggling an attractive proposition, since even when caught by Customs the the passenger retains the benefit of retaining the offending goods which works against deterrence.

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 undergarments worn by the respondent 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 with the 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. Government also notes that the redemption fine of Rs. 40,000/- (Rupees Forty thousand) and penalty of Rs. 10,000/- (Rupees Ten thousand) on gold weighing 50 grams, valued at Rs. 1,21,716/- (Rupees One Lakh Twenty one Seven hundred and Sixteen) is commensurate to the offence committed so as to dissuade such acts in future. The impugned Order

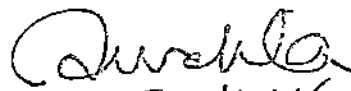


in Appeal therefore is liable to be upheld and the impugned Revision Application is liable to be dismissed.

9. Government therefore upholds the Order in Appeal C. CUS-I No. 744 dated 21.12.2015 passed by the Commissioner of Customs (Appeals-I), Chennai as being legal and proper.

10. The Revision Application is accordingly dismissed.

11. So, ordered.


20/11/18

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

ORDER No. 1104/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

1. The Commissioner of Customs (Airport), Chennai.
2. Shri Babu Derangula
S/o Subbaraydu Derangula
H. No. 5/1226, Sriramanagar,
Dorasanipalli Prodaur,
YSR district-A.P.
3. The Commissioner of Customs (Appeals-I), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

ATTESTED


S.R. HIRULKAR
Assistant Commissioner (R.A.)

