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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. 380/89-91 /B/16-RA | 2454

Date of Issue 20/12/2018

ORDER NO. ¹¹⁰⁹⁻111/2018-CUS (SZ)/ASRA/MUMBAI DATED 03.12.2018 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. Rabiya Bee
Smt. Mumtaj
Smt. Mehrunissa

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. CUS-I No. 586-588/2015 dated 30.09.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs (Airport), Chennai (herein referred to as Applicant) against the order in Appeal No. C. CUS-I No. 586-588/2015 dated 30.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the three Respondents along with Shri John Batsha who arrived as domestic passengers travelling from Tiruchirapalli to Chennai and were intercepted at the Anna International Airport on 11.02.2014. Examination of the person of the three ladies resulted in the recovery of 1625.5 grams of gold jewelry totally equivalent to Rs. 45,85,535/- (Rupees Forty Five lakhs Eighty Five thousand Five hundred and thirty five). The gold was worn by the Respondents. The sustained interrogation of Shri John Batsha revealed that the gold was handed over to him by one Shri Shahul Hameed Shaikh in flight, who in turn had brought gold jewelry from Singapore. The impugned gold was then handed over to the respondents by Shri John Batsha in flight for smuggling the same into India. During the course of the investigations one Shri P. Jain Allaudin laid his claim to the impugned gold giving representations that the gold belonged to him and it was handed over to the respondents through his driver at Trichy.

3. After due process of the law vide Order-In-Original No. 60/30.04.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) & (h) of the Customs Act, 1962, and imposed a penalty of Rs. 1,25,000/- each, on the three respondents and Rs. 5,00,000/- on Shri John Batsha and Rs. 7,50,000/- on Shri Shahul Hameed Shaikh under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the Respondents all filed an Appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. 586-588/2015 dated 30.09.2015 ordered release of the gold to the three Respondents and also reduced the penalty imposed to Rs. 10,000/- each on the three Respondents for non-declaration.



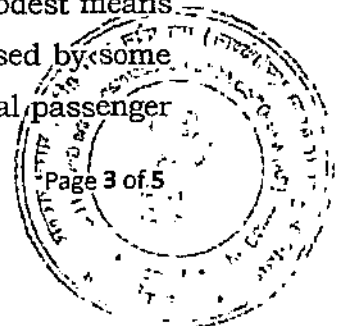
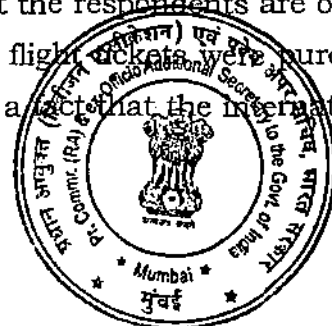
5. Aggrieved with the above order the Applicant department have filed this revision application, interalia on the grounds that;

5.1 In para 5 of the Order in Appeal, the Commissioner (Appeals) has observed that the passenger has admitted in their voluntary statement that the gold was handed over to them in the aircraft with the instructions to conceal the same without declaring to Customs.....this clearly establishes the modus operandi adopted and the mensrea is established; The instruction of the Board circular No. 06/2014-Cus dated 06.03.2014, wherein vide para 3(iii) of the said circular, it has been advised to be careful so as to prevent misuse of the facility of bringing the gold by eligible persons hired by unscrupulous elements.

5.2 The Revision Applicant cited various 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. The advocate for the Respondent has in his letter dated 20.09.2016 requested for a photocopy of the original order in Appeal so as to ascertain the date of receipt of the Order in Original. After acceding to the request, the personal hearing in the case was scheduled on 24.08.2018, 12.09.2018 and 03.10.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits

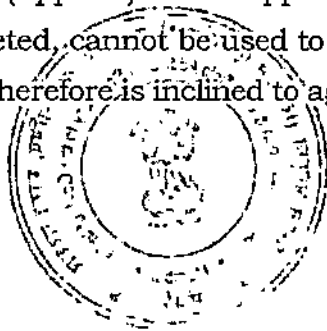
7. Government notes that, it is the departments case that the gold was handed over to them in flight by one Shri Shahul Hameed Shaikh. Shri Shahul Hameed Shaikh an international passenger had travelled from Singapore to Chennai via Tiruchirapalli. The three respondents and Shri John Batsha had boarded the flight at Trichy and Shri Shahul Hameed Shaikh handed over the gold to the respondents in flight, to be cleared as domestic gold, not liable to suffer customs duty. The respondents also did not declare the gold. The statements recorded during the course of investigations have revealed that the respondents are of modest means and therefore the assumption that their flight tickets were purchased by some other person gains authenticity. It is also a fact that the international passenger



Shri Shahul Hameed Shaikh had actually travelled on the international journey, as his name was verified from the passenger manifest as well as the customs declaration card.

8. However, Commissioner (Appeals) has released the gold mainly contesting the departments assertions that the jewelry seized are of 22 carat which are normally available in India, and as such cannot be termed as foreign made gold. Shri Shahul Hameed Shaikh the main protagonist of the case has not been traced, and without making proper enquiries with him the theory propounded by the department that the jewelry handed over by Shri Shahul Hameed Shaikh cannot be accepted. Though the statements of the respondents reveal a conspiracy to smuggle gold, there are no evidences to link these statements and conclusively to prove that the impugned gold is smuggled. The departments case hands solely on the statements recorded by the department. To conclusively prove that the gold was smuggled the statements recorded should have been corroborated with evidences which are sorely lacking in this case. Government also notes that if the gold was to be transported from Trichy to Chennai there was no need to hire four person (3 respondents and Shri John Batsha). The gold could have been easily be carried by one person. The Commissioner Appeals is right in concluding that the if the department suspects this to be the modus operandi, a full fledged investigation is needed, a routine halfhearted investigation will not suffice. Secondly the crucial link of Shri Shahul Hameed Shaikh has to be unearthed, and properly investigated. Shri John Batsha has stated that he knows Shri Shahul Hameed Shaikh, his address is available on his passport, flight and mobile details are available and a dedicated investigation would have reveal the facts. Further, the jewelry seized are of 22 carat which are normally available in India, Gold of foreign origin is normally 24 carat. There are a catena of judgements which states that statements recorded under section 108 of the Customs Act, 1962 have to be corroborated with evidences. In the absence of corroborative/circumstantial evidence, investigation is inconclusive and insufficient and therefore the benefit of doubt has to be extended to the respondents.

9. The Government therefore agrees with the contentions of the Commissioner(Appeals) in the Appellate order. The lacunae in the investigations, unless completed, cannot be used to disown the respondents of the gold. The Government therefore is inclined to agree with the Order-in-Appeal in releasing the



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

10. The Revision Application is accordingly dismissed.

11. So, ordered.

Ashok Kumar Mehta

03.12.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. ¹¹⁰⁹⁻1111/2018-CUS (SZ) /ASRA/mumbai

DATED 03.12.2018

To,

1. The Commissioner of Customs (Airport),
Anna International Airport,
Meenambakkam,
Chennai - -600 027.
2. Smt. Rabiya Bee
Smt. Mumtaj
Smt. Mehrunissa
C/o T. Cheziyan, Advocate,
No. 8, Eldams Road,
Alwarpet,
Chennai-600 018.
3. The Commissioner of Customs (Appeals), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy

ATTESTED

S.R. Hirulkar
24/12/18

S.R. HIRULKAR

Assistant Commissioner (R.A.)



ATTESTED

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

