



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 380/13-14/B/16-RA / 2971

Date of Issue 02/06/21

ORDER NO. ^{125-1259/2021} CUS (SZ)/ASRA/MUMBAI DATED 20.05.2021 OF THE
GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, 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 Ansar Abdul Gafoor

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C.CUS-I No.
364/2015 dated 30.06.2015 & 668/2015 dated 30.06.2015
passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by the Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order C. CUS-I No. 364/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Mohamed Ansar Abdul Gafoor a SriLankan citizen at the Anna International Airport, Chennai on 09.03.2015 as he tried walking out through the green channel of the arrival hall. Examination of his person resulted in the recovery of gold ring and one gold chain from his inner wear totally weighing 235 grams valued at Rs. 6,33,325/- (Rupees Six lacs Thirty three thousand Three hundred and Twenty five).
3. After due process of the law vide Order-In-Original No. 106/2015-16 dated 03.06.2015 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 but allowed redemption on payment of Rs. 2,50,000/- as redemption fine for re-export and imposed penalty of Rs. 60,000/- (Rupees Sixty thousand) under Section 112 (a) of the Customs Act,1962.
4. Aggrieved by this order the the Applicant department as well as the respondent filed appeals with the Commissioner of Customs (Appeals), The Commissioner (Appeals) reduced the redemption fine to 1,25,000/- and also reduced the penalty imposed to Rs. 40,000/- and allowed the Appeal. As the order in the Respondents appeal was already issued earlier, the Applicant departments Appeal dismissed as infructuous.
5. Aggrieved with the above order the Applicant department has filed this revision application stating that the order of the Commissioner (Appeal) is not legal nor proper for the following reasons;
 - 5.1 The Respondent had attempted to clear the gold without declaring it to the customs authorities and the declaration submitted did not contain the gold jewelry carried, as required under section 77 of the Customs

Act, 1962; The respondent attempted to smuggle the gold by way of deep concealment, indicating that the respondent had a culpable mind to smuggle gold circumventing restrictions and prohibitions imposed; In his declaration card the respondent had left the value as blank; In spite of being ineligible to import gold he attempted to clear it; Being a Sri Lankan citizen and an ineligible person to import the gold the gold in question becomes prohibited; The respondent acted as a carrier for monetary consideration and he was not the owner of the gold; The re-export of the goods is covered under section 80 of the Customs Act 1962, wherein it is mandatory to file a declaration for re-export; Boards circular No. 06/2014-Cus dated 06.03.2014 wherein in para 3(iii) it has been advised to be careful to prevent misuse of the facility to bring gold by eligible persons hired by unscrupulous elements; Both the Original Adjudicating Authority and the Appellate Authority failed to appreciate the above aspects; The order of the Appellate Authority has the effect of making smuggling of gold an attractive proposition, since the passenger retains the benefit of redeeming the gold even when caught by customs and works against deterrence.

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the redemption of the gold be set aside or any such order as deem fit.

6. In view of the above, personal hearings in the case were scheduled on 28.08.2018, 25.09.2018, 12.12.2018, 21.11.2019 and 05.12.2019. Due to change in Revisionary authority a hearing was again scheduled on 08.12.2020, 15.12.2020, 22.12.2020 and on 25.02.2021. Nobody attended the hearing on behalf of the Applicant department or Respondent. The case is therefore being decided *ex parte* on merits.

7. The Government has gone through the case records. It is observed that the respondent had left the value of dutiable goods blank and did not declare the gold as required under section 77 of the Customs, Act, 1962 and had opted for the green channel. Therefore the confiscation of the gold is justified.

8. Government however notes that the respondent is a foreign citizen. Gold is a restricted item and its import is not prohibited. The seriousness of the misdemeanor is required to be weighed before invoking penal provisions for a

proper and justified deterrence. The Respondent does not have an history of previous offences. Further, there are a number of judgments wherein the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 requires it to be exercised. The section also allows the gold to be released to the person from whose possession the goods have been recovered, if the owner of gold is not known. Under the circumstances, and considering other facts of the case original adjudicating authority has rightly allowed redemption of the gold and observing that the passenger is a foreign national, allowed re-export. The Appellate authority, has upheld the redemption and further reduced the redemption fine and penalty to appropriate levels. Under the circumstances the order of the Appellate authority is liable to be upheld.

9. In view of the above facts, Government is of the opinion that the order of the Appellate authority does not merit interference. The Revision Application is therefore liable to be dismissed.

10. Revision application is accordingly dismissed.

Shrawan
20/05/21
(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

125/125a

ORDER No. /2021-CUS (SZ) /ASRA/

DATED 20.5.2021

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Mohamed Ansar Abdul Gafoor, C/o Shri A. Ganesh, Advocate, F. Block179, IV Street, Annanagar, Chennai 600 102

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1. Sr. P.S. to AS (RA), Mumbai.
2. Guard File.
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