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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 380/62/B/16-RA / 2023

Date of Issue 29.01.2024

ORDER NO.13/2024 - CUS (SZ)/ASRA/MUMBAI DATED 29.01.2024 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 Hafizullah Davoobhaigari

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 732/2015 dated 30.11.2015 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. 732/2015 dated 30.11.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Hafizullah Davoobhaigari at the Anna International Airport, Chennai on 04.01.2015 as he tried walking out through the green channel with his baggage. Examination of his person resulted in the recovery of three gold pieces strapped to his under arms totally weighing 590 grams valued at Rs. 15,91,820/- ( Rupees Fifteen lacs Ninety one thousand Eight hundred and Twenty ).

3. After due process of the law vide Order-In-Original No. 54/2015-16 AIRPORT dated 28.04.2015 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption of the same on payment of Rs. 5,50,000/- (Rupees Five lacs fifty thousand) for re-export as redemption fine and imposed penalty of Rs. 1,50,000/- (Rupees One lac fifty thousand) under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant department filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) rejected the Appeal.

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 smuggle the gold by way of concealment in two packets under his arm pits, knowing he was not eligible to import gold; He had a culpable mind to smuggle the gold, circumvent the restrictions and prohibitions on import of gold; He did not declare the gold as required under section 77 of the Customs Act,1962, and therefore liable for absolute confiscation; In spite of being ineligible to import gold he attempted to clear it; Being an ineligible person to import the gold the gold in question becomes prohibited; The respondent in his statement has stated that he acted as a carrier for monetary consideration and he was not the owner of the gold; The advocates retraction is an attempt to escape the clutches of the law and the purchase documents have been fabricated at a later stage; 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.

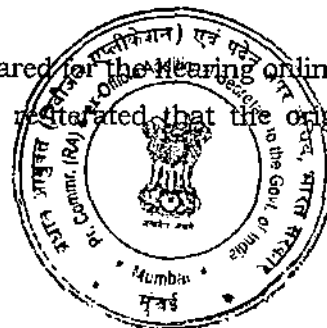
6. The Respondent meanwhile filed a Writ Petition No. 17968 of 2016 before Hon'ble High Court of Madras for issuance of a writ of mandamus directing the respondent (Applicant department) to release the gold and give effect to the impugned order in Appeal. In reply the Applicant department informed that the Hon'ble High Court of Madras that a Revision Application has been filed before the revision authority in this regard and awaiting orders. The Hon'ble High Court of Madras issued the following orders:-

*(a) " The Writ petition is disposed of directing the respondent to release the goods (gold) for purpose of re-export subject to the petitioner complying with the conditions imposed in the order passed by the Commissioner (Appeals) i.e., payment of redemption fine for re-export and personal penalty and also giving an undertaking to comply with the order in original, in the event the Department succeeds in the revision, with a period of two weeks from the date of receipt of a copy of this order.*

*( b) In the event there is no stay in the Revision Petition that has been preferred by the respondent, then it is hereby directed that the main revision petition shall be disposed of within period of eight weeks from the date of receipt of a copy of this order. No costs."*

7. In view of the above, similar pending cases were taken up for hearing, prioritizing the disposal of older cases, on the basis of its pendency and personal hearings in the case were scheduled on 27.08.2018, 17.09.2018, 26.09.2018 21.11.2019, 05.12.2019, 01.12.2020, 03.12.2020 and 07.12.2020. Nobody attended the hearing on behalf of the Applicant department.

8. The Advocate for the Respondent appeared for the hearing online, on 07.12.2020. In his written submissions sent by post he reiterated that the original adjudicating



authority has held the Applicant to be an eligible passenger after verifying the residency permits and passport entries. The Applicant was therefore allowed to import 5kgs of gold, and 1kg on concessional rate of duty. The Applicant was carrying 750 Kuwaiti Dinars to pay customs duty in convertible foreign currency. He did not cross the Customs barrier through the green channel as alleged. In the written submission dated 14.12.2020, he stated that

8.1 The Respondent is an eligible passenger to import gold up to 1 Kg as per the Notification No.12/12 as he had stayed more than 6 months in abroad, before coming to India. In evidencing the same he submitted the relevant copies of the Passport No. F 7571871, wherein on page No.5 it is clear that the respondent left India on 5th June 2014 and returned back to India only 4/1/2015, and that he stayed in Kuwait for 7 months. Thus he fulfills the condition of the Notification 12/12 and therefore he is an eligible passenger to import gold and clear the gold on payment of concessional rate of Duty of 10%. Thus, the import of gold by the respondent is not prohibited.

8.2 The Respondent was working in Kuwait as a cashier in M/s Aadhil Fancy Store and earning Rs.50,000/- per month, since 2009 which is evident from the passport employment visa entry at page no. 8. The visa was subsequently extended, periodically, page No.10, 9 and 14 of the typed set. As he came to India in the month of February 2014 and left India on 5.6.2014 and came back to India after 7 months stay in Kuwait. He therefore fulfills the conditions stipulated in Notification No.12 of 2012 and therefore is an eligible to import gold upto 1 Kg. The adjudicating authority had rightly perused the passport and came to the conclusion that he is an eligible passenger.

8.3 On 25.12.2014 the respondent had purchased 601 grams of gold by paying 6666 Kuwait Dinar. Producing the purchase Bill at Page 17, He stated that he was having 750 Kuwait Dinar with him to pay the customs duty.

9. Government observes that the Applicant department has submitted that the gold was not declared and therefore warrants absolute confiscation. In addressing this submission Government notes the Advocate of the respondent has submitted before the Original adjudicating authority that he is an eligible passenger to import gold as he fulfills the conditions required as per notification no. 12/2012 and therefore is eligible to bring one kilogram of gold on concessional rate of duty. This eligibility has been accepted by the Original adjudicating authority and the Appellate authority. Government however observes that a declaration is paramount in such situations so that the import suffers appropriate customs duty. A proper declaration was not submitted as required under section 77 of the Customs, Act, 1962, and the Respondent



