



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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

Mumbai-400 005

F.No. 380/17/B/16-RA | 2967

Date of Issue 02/06/21

ORDER NO. 130/2021-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 Ana Kallinthavida Rahim

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 735/2015 dated 30.11.2016 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 department) against the order C. CUS-I No. 735/2015 dated 30.11.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs on 30.03.2015 intercepted Shri Ana Kallinthavida Rahim who arrived from Sharjah at the Anna International Airport, as he was walking through the green channel. The search and examination of his person resulted in the recovery of two gold chains totally weighing 502 gms valued at Rs. 11,85,975/-/- (Rupees Eleven lacs Eighty five thousand Nine hundred and Seventy five) from his pant pockets.

3. After due process of the law vide Order-In-Original No. 171/2015-16-Airport dated 30.06.2015 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. 5,50,000/- (Rupees Five lacs Fifty thousand) for re-export and imposed penalty of Rs. 1,10,000/- (Rupees One lac ten thousand) under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant department as well as the respondent filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) upheld the order of the Original Adjudicating Authority and rejected the Appeal of the Applicant department.

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 manner of concealment in the pant pocket and the non declaration of the gold as required under section 77 of the Customs Act,1962, inspite of being an ineligible to import gold clearly indicates that the respondent had a culpable mind to smuggle gold. The respondent was not eligible to import gold as he did not fulfil the conditions of the Notification 12/2012 dated 17.03.2012; Further as per rule 6 of the Baggage rules 1998 a person who has stayed for more than a year can bring

gold jewelry to and extent of one lakh for females and fifty thousand for males.; Being ineligible to import the gold the gold in question becomes prohibited; 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 the smuggling of gold an attractive proposition since the passenger retains the benefit of redeeming the offending goods even when caught by the Customs which totally 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 and 27.11.2018. Nobody attended the hearing on behalf of the Applicant department or Respondent. In view of the change in the Revisionary authority a personal hearing was again scheduled on 08.12.2020, 15.12.2020, 22.12.2020 and on 25.02.2021. However no one attended the said hearing, the case is therefore being decided on merits.

7. The Government has gone through the case records. It is observed that the respondent 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 gold chains were recovered from the respondents pant pockets and was therefore not ingeniously concealed. The respondent does not have an history of previous offences. The Original adjudicating authority has considered the fact that the Respondent has brought the gold for his sisters wedding and is the owner of the gold. Gold is freely being imported in India and 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. Hon'ble Supreme Court of India in Hargovind Das K Joshi Versus Collector of Customs reported in 1992 (61) E L -I 172 C) has has remanded to Collector for consideration of exercise of discretion for imposition of redemption fine, observing that, Collector has absolutely confiscated without considering question of redemption on payment of fine although having discretion to do so. In CC (Airport), Mumbai Vs Alfred Menezes 2009 (242) ELT 334 (Bom.), the Hon'ble High Court held that Section 125(1) ibid clearly mandates that it is

within the power of adjudicating authority to offer redemption of goods even in respect of prohibited goods by applying the discretion judiciously.

9. The ownership of the gold is not disputed therefore the Government observes that the Original authority has, considering the finer aspects of the case, rightly allowed redemption. The redemption fine and penalty is more than sixty percent of the value of the gold and the same is appropriate. The Appellate order has therefore upheld the decision of the original adjudicating authority. Government observes that as per the provisions of section 125 of the Customs Act, 1962, in case of goods which are prohibited the option of redemption is left to the judicious use of discretionary power of the authority who is functioning as a quasi judicial authority and in cases of others goods option to allow redemption is mandatory. Government therefore does not find any reason to interfere with the order of the Appellate authority. Under the circumstances the Appellate order is liable to be upheld and the revision application is liable to be dismissed.

10. Revision application is accordingly dismissed.

Shrawan
20/5/21
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 30 /2021-CUS (SZ) /ASRA/

DATED 20.05.2021

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Ana Kallinthavida Rahim, Lallarayil House, Edayar, via Chittariparamb, Kerala 670 650.

Copy to:

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