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MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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F.No. 380/02/B/16-RA / 5593

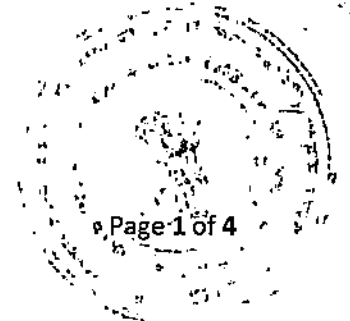
Date of Issue 21.09.2020

ORDER NO. 132/2020 CUS (SZ)/ASRA/MUMBAI DATED 10.08.2020 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, 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 Thamboli Shafiulla

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 407 & 408/2015 dated 24.08.2015 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. 601 & 407 & 408/2015 dated 24.08.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Thamboli Shafiulla at the green channel of the Anna International Airport, Chennai on 31.01.2015. Examination of his person resulted in the recovery of three gold pieces from his pant pockets totally weighing 268 grams valued at Rs. 6,87,891/- (Rupees Six lacs Eighty seven thousand Eight hundred and Ninety one).

3. After due process of the law vide Order-In-Original No. 15/15-16-AIRPORT dated 17.04.2015 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 for re-export on payment of Rs. 2,50,000/- (Rupees Two lacs Fifty thousand) as redemption fine and imposed penalty of Rs. 60,000/- (Rupees Sixty thousand) under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order both the Applicant department and the respondent filed appeals with the Commissioner of Customs (Appeals). The Commissioner (Appeals) reduced the redemption fine to Rs. 1,50,000/- and also reduced the personal penalty to Rs. 40,000/- 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 or proper for the following reasons;

5.1 The Respondent had attempted to clear the gold pieces without declaring it to the customs authorities; there was no declaration of the gold as required under section 77 of the Customs Act,1962,; The respondent acted as a carrier when he was not the owner of the gold; In his initial statements he stated that the gold was to given to him by another person and he had agreed to carry it for a monetary consideration of Rs. 10,000/- ; In spite of being ineligible to import gold he attempted to clear it indicating that the respondent had a culpable mind to smuggle gold. ; The retraction was given by him after two months, at the time of personal hearing is inadmissible; 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.; The Appellate authorities order in lowering the redemption fine and penalty and allowing re-export is therefore not sustainable as per law. 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 examine the above aspects and the ownership of the gold and its source of funding. The order of the Appellate authority has the effect of making gold an attractive proposition as when caught the passenger retains the benefit of redeeming the offending goods and works against deterrence.

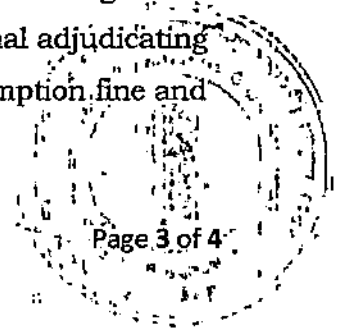
5.2 The Revision Applicant cited case laws in support of their contention and prayed that the redemption of the gold be set aside or any such order as deem fit.

6. In view of the above, personal hearings in the case were scheduled on 27.08.2018, 17.09.2018 and 26.09.2018. Nobody attended the hearing on behalf of the Applicant department or Respondent. The case is therefore being decided exparte 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 further notes that there was no ingenious concealment. There is no allegation that the respondent was involved in any earlier similar offences. Gold is a restricted item and its import is not prohibited. Absolute confiscation of the gold in such situations would be an order in excess. 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 mandatorily. 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. The above facts may have weighed in

of the respondent and considering these circumstances the Original adjudicating authority has rightly allowed redemption of the gold on appropriate redemption fine and



9. The impugned Order in Appeal has reduced the redemption fine and penalty imposed by the Original Adjudicating authority, and further allowed re-export. Government finds that the order in Appeal is well reasoned and there is no reason to interfere with the same. The impugned Order in Appeal therefore needs to be upheld.

10. Under the circumstances the order of the Appellate authority is upheld.

11. Revision application is accordingly dismissed.

12. So, ordered.

(SEEMA ARORA)

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

ORDER No. 32/2020-CUS (SZ) /ASRA/

DATED 0-03-2020

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Thamboli Shafiulla 18/130-1, Sadhu Chenganna Street, Kadappa, Andhra Pradesh.

Copy to:

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

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

