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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. 380/10/B/16-RA / 3351

Date of Issue 11.09.2020

ORDER NO. 136/2020-CUS (SZ)/ASRA/MUMBAI DATED 13.08.2020 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 : Smt. Jarina Begum

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 692/2015 dated 30.10.2015 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. 692/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs, Chennai intercepted Smt. Jarina Begum a domestic passenger at the Chennai airport. The passenger had not declared the value of dutiable items in her declaration form. The search and examination of her person resulted in the recovery of two gold bangles, a gold chain and three gold coins totally weighing 198 grams valued at Rs. 5,39,550/- (Rupees Five lacs Thirty Nine thousand Five hundred and Fifty).

3. After due process of the law vide Order-In-Original No. 82/2015-16 dated 26.05.2015 the Original Adjudicating Authority dropped the proceedings against the passenger, considering that there was no evidence that the respondent had smuggled the gold from outside India, the respondent was a domestic passenger who is not supposed to file a declaration, and no further investigations to prove the theory that the gold was handed during the flight by an international passenger.

4. Aggrieved by this order the Applicant department filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order C. Cus-I No. 692/2015 dated 30.10.2015 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 interalia for the following reasons;

5.1 (i) The p-assenger had attempted to smuggle the gold by way of concealment on her 'person' and by way of non-declaration to Customs knowing well that she was not an eligible passenger to import gold



(ii) She had a culpable mind (a) to smuggle the gold into India without payment of duty and (b) to circumvent the restrictions / prohibitions imposed on the import of gold;

(iii). The passenger has not declared to the Customs officer about the possession of gold weighing 227 (valued at Rs.6,13,442/-) as required under Section 77 of Customs act, 1962;

(iv) An eligible passenger can clear the imported gold, which was declared to Customs at the concessional rate of 10% duty under Notification No. 12/2012 CUS dated .17;03.2012 as amended. But, in this case, the passenger Smt. Jarina Begum is not an eligible passenger to import gold, since she has not fulfilled any of the conditions stipulated in the above said notification.)

(v) As per Notification No. 12/2012- Cus dated 17.03..2012, the passenger of Indian origin or a passenger holding a valid Indian Passport issued under the Passport Act, 1967, who is coming to India after a period of stay not less than six months of stay abroad;

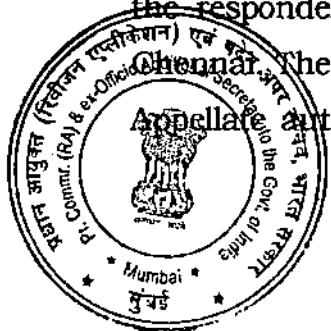
(vi) The passenger was a Sri Lankan citizen and therefore not a passenger of Indian origin and therefore not eligible to import gold.

(vii) In her initial statements the passenger had stated that the gold was handed over to by a person inside the flight and she had accepted to carry it for a monetary consideration of Rs. 5000/- .

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. The case is therefore being decided exparte on merits. ~~SECRET~~

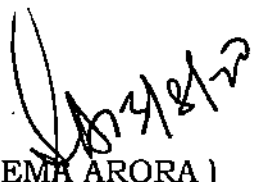
7. The Government has gone through the case records. It is observed that the respondent was a domestic passenger who has travelled from Trichy to Chennai. There is no necessity to declare the gold for a domestic passenger. The Appellate Authority has rightly contended that the eligibility under notification



12/2012-CUS dated 17.03.2012 is not binding on a domestic passenger. Being on a domestic flight she is not required to carry foreign currency for payment of customs duty. The revision application has raised the aspect of her initial statements that the gold was handed over to by a person inside the flight and she had accepted to carry it for a monetary consideration, which has been retracted by the passenger the very next day. Government also observes that the Applicant department has not made any further efforts to trace that person or investigate this aspect further. Penalizing a person for unsubstantiated evidences is not proper. The fact that the respondent is an foreign citizen does not dissallow her in wearing gold jewelry. In view of the above facts, Government is of the opinion that the order of the Appellate authority is proper and is accordingly upheld.

8. Revision application is accordingly dismissed.

9. So, ordered.


 (SEEMA ARORA)
 Principal Commissioner & ex-officio
 Additional Secretary to Government of India

ORDER No. 36 /2020-CUS (SZ) /ASRA/

DATED 3-08-2020

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Smt Jarina Begum, 142/292 Triplinacane High Road, Chennai 600 005.

Copy to:

1. Shri M. Abdul Nazeer, Advocate, 65, Barrack Road, Vardhamma Garden, 3rd street Kilpauk, Chennai 600 010.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED

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

