380/122/B/16-RA

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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. 380/122/B/16-RA / 53 82-

Date of Issue 14:09.2020

ORDER NO.\37/2020CUS (SZ)/ASRA/MUMBAI DATED \3.08.2020 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 Abdul Bashit Basheer Ahmed

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 124/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Chennai.



2.5

## 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. 124/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Abdul Bashit Basheer Ahmed at the Anna International Airport, Chennai on 29.12.2015 as he tried passing through the green channel. Examination of his person resulted in the recovery of a gold chain from his under garments weighing 165 grams valued at Rs. 3,84,754/- (Rupees Three lacs Eighty four thousand Seven hundred and Fifty four).

3. After due process of the law vide Order-In-Original No. 1384/2015-Batch C dated 29.12.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 39,000/- (Rupees Thirty Nine thousand) under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Respondent filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order allowed redemption on payment of redemption fine of Rs. 1,15,000/- ( ( Rupees One lac Fifteen thousand ) and reduced the penalty to Rs. 25,000/-



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;

5.1The manner of concealment 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 having any foreign currency to pay the customs duty; The respondent acted as a carrier when he was not the owner of the gold; Being ineligible to import the gold the gold in question becomes prohibited; Boards circular No. 06/2014-Cus dated 06.03.2014 wherein in para 3(iii) it has been advised to be care ful to prevent misuse of the facility to bring gold by eligible persons hired by unscrupulous elements; Bothe 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. The case is therefore being decided exparte on merits.

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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.

 Respondents undergarments and there are no allegations that the gold was ingeniously concealed. The respondent does not have an history of previous offences. The quantity of gold is small. The applicant is not established as a carrier. 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. The ownership of the gold is not disputed and considering overall circumstances of the case, the Appellate authority has rightly allowed redemption of the gold. The order of the Appellate authority is to be upheld.

9. In view of the above facts, Government is of the opinion that the Appellate authority has rightly taken a lenient view in the matter and allowed the gold on redemption fine and penalty. The order in appeal is therefore to be upheld.

10. Revision application is accordingly dismissed.

11. So, ordered.

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

ORDER No.137/2020-CUS (SZ) /ASRA/

DATED 3 08.2020

Τо,

- 1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
- 2. Shri Abdul Bashit Basheer Ahmed S/o Basheer Ahmed, No. 3 JadiyaHajyar Street, Nagor Post, Nagapattinam, Tamilnadu.

Copy to:

## ATTESTED

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

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



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