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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F NO. 380/66-67/B/16-RA

Date of Issue: 23.11.2017

ORDER NO. 14-15/2017-CUS (SZ)/ASRA/Mumbai DATED 23rd November, 2017
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant: The Principal Commissioner of Customs, Chennai-I.

Respondent: Shri Bhassi Reddy Venugopal Reddy Konapuram Nandhalur, Kadapa-516 001
Andhra Pradesh.

Subject: Revision Applications filed, by The Principal Commissioner of Customs, Chennai-I under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No._C. Cus-I No. 724/2015 dated 30.11.2015 and Order-In-Appeal No.10/2016 dated 29.01.2016. passed by The Commissioner of Customs (Appeal-I), Chennai.

ORDER

380/66-67/R/16-RA

This Revision Application has been filed by the revenue against the orders of Commissioner Appeals. Order-in-Appeal No. C. Cus-I No. 724/2015 dated 30.11.2015 and Order-In-Appeal No.10/2016 dated 29.01.2016 filed by the revision applicant and by the department respectively.

2. On 27.03.2015 Shri.Bhasi Reddy Venugopal Reddy, who arrived from Kuwait was attempting to go out through the green channel. He had filled up the value of dutiable goods brought by him as "-" in the Customs declaration card. The passenger was intercepted by the officers and examination of his person was undertaken, the cutting of his innerwear revealed transparent polythene packets containing five nos gold bits totally weighing 556 gms v/a Rs.15,10,096/- (M.V.). As the passenger had attempted to smuggle the said gold pieces by not declaring the same and by way of concealing them in his innerwear and as the passenger was not in possession of any valid permit and as he was not eligible to bring gold, the same was seized under section 110 of the Customs Act, 1962.

3. The Joint Commissioner (Customs), Anna International Airport, Chennai in his order in original No. 314/2015-16 dated 11.09.2015 held that the seized gold was liable for confiscation as the gold was concealed by the passenger and does not constitute to be bonafide baggage. Accordingly he ordered for confiscation of the seized gold, but however, gave him the option to redeem the same for re-export on payment of Rs. 7.5 lacs and he also imposed penalty of Rs. 1.5 lacs on the revision applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner of Customs (Appeal-I), Chennai, requesting for reduction of fine and penalty. While disposing the Appeal filed by the applicant, the Commissioner (Appeals-I) vide his order in appeal C. Cus-I No. 724/2015 dated 30.11.2015, has reduced the redemption fine to Rs. 2.5 lacs from Rs, 7.5 lacs and penalty to Rs. 75,000/- from Rs. 1.5 lacs and thus, allowed the applicant's appeal.

5. The department filed its appeal before the Commissioner of Customs (Appeal-I), Chennai on 14.01.2016. The Commissioner(Appeals-I) dismissed the departmental appeal vide his Order-In-Appeal No.10/2016 dated 29.01.2016 as the department had filed the appeal against the same impugned order, subsequently on 14.01.2016 after the order in appeal dated 30.11.2015 passed in appeal filed by the applicant. The Commissioner(Appeals-I) held that the instant departmental appeal has become *infructuous*, and as per doctrine of Merger the, impugned O-i-O passed by the lower adjudicating authority gets merged with O-i-A passed by CC (Appeals), and hence the impugned order has become a nullity at this stage and does not exist/survive at all.

Revisionary Authority, Mumbai on 09.10.2017 and has immediately set upon establishing an office. The order of allocation of space for setting up an office was issued on 02.11.2017, and the setting up of office is still in progress. This case is among the first set of cases taken up for hearing in view of the directions of the Hon'ble High Court of Madras, order dated 14.12.2016. In the interest of justice and in compliance of the directions of the Hon'ble High Court of Madras and with due expedition the case was taken up for adjudication at the request of the revision applicant as the period of eight (8) weeks had lapsed.

11. The personal hearing in the matter was held on 09.11.2017, Shri T. Cheziyan, advocate attended the hearing on behalf passenger. In his submissions he has interalia submitted that

- (i) Once the original authority has given his categorical and detailed findings as to the facts of the case and the Appellate authority confirming the same and giving further relief in reduction in quantum, it cannot be abridged by the Revisionary authority, since the orders of the Appellate authority are not perverse.
- (ii) The Original authority has granted the option of redemption fine since the passenger is an "eligible passenger" for import of the gold on a concessional rate of duty and the exemption notification has to be construed liberally.
- (iii) This is not a case of concealment as the gold was originally kept in the pant pocket of the passenger. If the gold was kept in the undergarment, the department should have seized the undergarment, which was not done.
- (iv) The Adjudication authority has confiscated the gold and has exercised his discretion vested with him in to give it on redemption fine.
- (v) The Madras High Court has decided in a recent case of " Abhishek Mundra" that once a discretion has been exercised by the original authority under section 125 of the Customs Act. 1962, the same cannot be interfered with and therefore prayed for dismissal of the appeals.

12. I have gone through the case records, on examination of the of relevant records relating to above mentioned Revision Application, it is found that the main issue that is contested is whether the order in appeal is right in allowing re-export of the gold on payment of the redemption fine and penalty.

13. I find that the passenger in his statement has stated that he is an NRI for the last 10 years and has purchased the seized gold out of his savings, his short stay in India confirms his eligibility to bring gold. However he has not declared the gold to the Customs authorities. The gold which has not been declared and when it fulfils the conditions stipulated in notification 12/2012 dated 17.03.2012 also cannot be considered as bonafide baggage. Any goods which are imported or attempted to be imported contrary to any prohibitions imposed by or under the provisions of the Customs Act, 1962 or any other law in force are liable for confiscation under the Customs Act, 1962. It would meet the ends of justice and determent, if the confiscated gold be allowed to be redeemed only for re-export on payment of redemption fine of Rs. 2,50,000/- (Rupees Two lacs fifty thousand) and penalty of Rs. 75,000/- (Rupees Seventy five thousand).



14. In view of the above facts, I find no reason to interfere with the order of the Commissioner(Appeals) in respect of the confiscation of the gold bits, weighing 556 gms valued at Rs. 15,10,096/- and allowing it for redemption for re-export only on the terms and conditions imposed in the order in appeal.

15. The Government, accordingly upholds the Orders in Appeal dated 30.11 2015 and 29.01.2016 passed by the Commissioner (Appeals) in entirety and rejects the revision application.

23rd November, 2017

Ashok

(ASHOK KUMAR MEHTA)
Principal Commissioner (RA) & Ex-Officio
Additional Secretary to Government of India
Mumbai

*True copy attested
Sudh
27/11/17*

*SANKARAN MUNDH
ASST Commr (RA)*

The Principal Commissioner of Customs, Chennai-I
Chennai-1 Commissionerate,
New Customs House,
Meenambakkam,
Chennai 600 027.

ORDER No. 14-15/2017-CUS(SZ) /ASRA/ Mumbai

Dated: 23rd NOVEMBER, 2017

Copy to;

1. Shri Bhasi Reddy Venugopal Reddy, Konapuram Nandhalur, Kadapa-516 001, Andhra Pradesh.
2. the Commissioner of Customs (Appeal-I), Chennai. 60, Rajaji Salai, Custom House, Chennai -600 001.
3. The Joint Commissioner of Customs (Airport), Anna International Airport, Meenambakkam, Chennai 600 027.
4. Sr. P.S. to AS(RA), Mumbai.
5. Guard File .
6. Spare Copy.