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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. 380/121/B/16-RA/292

Date of Issue 29.01.2021

ORDER NO. 14/2021-CUS (SZ)/ASRA/MUMBAI DATED 19-01-2021 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 Senthil Kumar

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C-CUS-I No. 206/2015 dated 31.03.2016 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. 206/2015 dated 31.03.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Senthil Kumar a domestic passenger travelling from Trichy at the Chennai airport. The passenger had not declared the value of dutiable items in his declaration form. The search and examination of his person resulted in the recovery of gold jewellery totally weighing 692 grams valued at Rs. 13,48,960/-/- (Rupees Thirteen lacs Forty eight thousand Nine hundred and Sixty).

3. After due process of the law vide Order-In-Original No. 295/2015-16-Airport dated 08.09.2015, the Original Adjudicating Authority dropped the proceedings against the passenger, considering that the respondent was a domestic passenger and there was no evidence that the respondent had smuggled the gold from outside India, The respondent being a domestic passenger is not supposed to file a declaration, and no further investigations were carried out to prove that the gold was handed over to him 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. 206/2015 dated 31.03.2016 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;

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



(ii) He 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 692 valued at Rs. 13,48,960/-/- (Rupees Thirteen lacs Forty eight thousand Nine hundred and Sixty). 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 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) In his initial statements the passenger had stated that the gold was handed over to by an unknown person at the Airway bridge and he had accepted to carry it for a monetary consideration of Rs. 25,000/- .He was also instructed to conceal the gold by wearing it and covering the same. Attempts were made by the officers to trace the receiver of the gold outside the airport were futile.

(vii) Board's 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;

(viii) 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. The Respondent meanwhile filed a Writ Petition No. 18913 and 16502 of 2016 before Hon'ble High Court of Madras for issuance of a writ of mandamus directing the respondent (Applicant department) to act on the petitioners representation dated 24.05.2016 and cause release the gold in terms of Order in Appeal 206/2015 dated 31.03.2016 passed by the Commissioner of Customs (Appeals-I) Chennai. The



Hon'ble High Court of Madras ordered the respondent, ie the Chief Commissioner of Customs Chennai *".....to take a decision on the representation dated 24.05.2016 of the petitioner taking into consideration the fact that the original Authority has also passed an order in favour of the petitioner.....within a period of two weeks from the date of receipt of a copy of this order."*

7. Personal hearings in the case were scheduled on 28.08.2018, 25.09.2018, 27.11.2018 and 15.12.2020. Shri B. Satish Sundar, Advocate) attended the hearing online on 15.12.2020 behalf of the Respondent. He reiterated that the original adjudicating authority and the Appellate authority have passed reasoned orders and prayed for the same to be maintained. Nobody attended the hearing on behalf of the Applicant department.

8. 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 concluded that the eligibility under notification 12/2012-CUS dated 17.03.2012 is not binding on a domestic passenger. Being a domestic passenger he is not supposed to carry foreign currency for payment of customs duty. The facts of the case also reveal that the Respondent was wearing the gold and there was no ingenious concealment.

9. The revision application has raised the aspect of his initial statements that the gold was handed over to the respondent by an unknown person at the airway bridge and he had accepted to carry it for a monetary consideration. The Applicant department however has not been able to intercept the person who is supposed to have handed over the gold to the respondent and also could not trace the recipient of the gold outside the airport. The Advocate of the respondent in his written submission has submitted that the Respondent is an equal partner in the jewelry firm M/s Sri Laxmi Jewelry, and in the course of business he was transporting the jewelry to Chennai to his customers for approval before sale, and as it was not approved he was bringing the jewelry back to Chennai. The investigations have not explored these aspects. The Hon'ble Tribunal in the case of Commissioner of Customs (P) , (W.B.) Vs Golak Chandra Kamilla reported in 2006 (205) E.L.T. 665 (Tri. - Kolkata) has held that *"Smuggling - Confiscation - Seizure of foreign marked gold biscuits -Goods claimed to have been acquired from a gold dealer firm - Appellant discharged burden under Section 123 of Customs Act, 1962 by producing document relating to lawful acquisition of goods - Department failed to prove such document as false - Goods not liable to confiscation - No infirmity in impugned order - Section 111 ibid."* The Tripura High Court in the case of



UOI Vs Manidipa Debroy Chowdhury reported in 2020 (374) ELT A38 (Tripura) has held observed that "I find that the entire case was made out by the department as smuggled gold on the basis of conjecture and surmises that the seized gold bangles were made out of smuggled gold converted into ornaments. I do not find any direct or indirect link in support of the allegation of the department. In my view the Investigating Officer should have enquired the matter in detail in support of their allegation. It appears that the Investigating Officer in the present case had merely proceeded on the basis of the initial statement and have not examined the details thoroughly." The facts of the impugned case are very similar to the said case. In view of the above facts, Government is of the opinion that the order of the Appellate authority is liable to be upheld and the Revision application is liable to be dismissed

10. Revision application is accordingly dismissed.

Shrawan
19/1/21
(SHRAWAN KUMAR)

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

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

DATED 19-01-2021

To,

1. The Commissioner of Customs, Chennai -1 Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Senthil Kumar, No. 15, Reddy Chandira Street, Thiruppapuliur, Cuddalore, Tamilnadu 607 002.

Copy to:

1. Shri B. K. Associates, # 117/55 Egmore High Road, Egmore, Chennai 600 008.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

