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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 380/15-16/B/16-RA / 1269

Date of Issue 23.02.2021

ORDER NO.15-16/21/CUS (SZ)/ASRA/MUMBAI DATED 27.01.2021 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 Shaikh Abdul Munaf

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 566 dated 14.09.2015 & 715/2015 dated 30.11.2015 passed by the Commissioner of Customs (Appeals), Chennai.



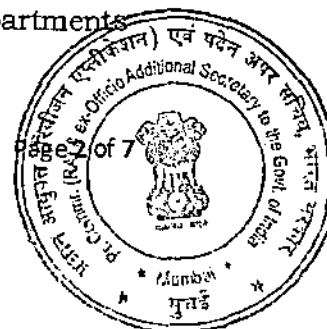
ORDER

This revision application has been filed by the Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order C. CUS-I No. 566 dated 14.09.2015 & 715/2015 dated 30.11.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Shaikh Abdul Munaf at the Anna International Airport, Chennai on 23.02.2015 as he attempted to pass through the green channel. Examination of his person resulted in the recovery of one gold bar and six gold bits from his pant pockets. The gold totally weighed 1968.5 grams valued at Rs.50,45,423/- ( Rupees Fifty lacs Forty five thousand Four hundred and twenty three ).

3. After due process of the law vide Order-In-Original No. 157/24.06.2015 dated 24.06.2015 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 but allowed redemption for re-export on payment of Rs. 25,25,000/- ( Rupees Twenty five lacs Twenty five thousand) and imposed penalty of Rs. 5,00,000/- (Rupees Five lacs) under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Applicant department as well as the respondent filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) observed that the redemption fine is in excess of the criteria of wiping the margin of profit, and vide his order deciding the Respondents appeal reduced the redemption fine to Rs. 10,00,000/- ( Rupees Ten lacs ) and also reduced the penalty to Rs. 2,00,000/- (Rupees Two lacs ). The Applicant department had filed their appeal after the case was decided by the Commissioner (Appeals ) on the respondents Appeal. As the order in the Respondents appeal was already issued earlier, the Applicant departments Appeal was dismissed as infructuous.

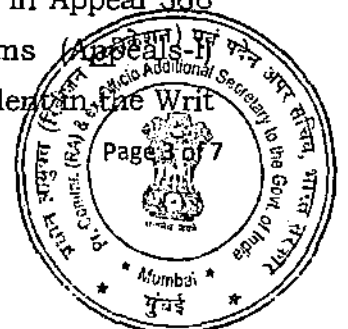


5. Aggrieved with the above order the Applicant department has filed this revision application stating that the order of the Commissioner (Appeal) is not legal nor proper for the following reasons;

5.1 The 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 for monetary considerations as he was not the owner of the gold, the gold was supposed to be handed over to persons after coming out of the airport; The retraction is an afterthought to escape the clutches of the law; 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.; 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 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. The Respondent meanwhile filed a Writ Petition No. 29171 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 566 dated 14.09.2015 passed by the Commissioner of Customs (Appeals-II) Chennai. The Hon'ble High Court of Madras ordered the respondent in the Writ





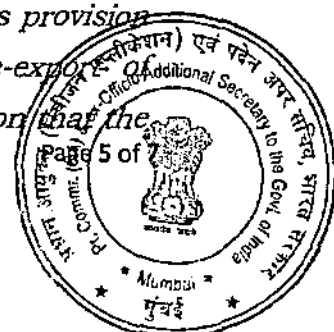
*1993 exempts the Import of certain quantity of gold as part of baggage by a person of Indian origin or a passenger holding a valid passport issued under the Passport Act, 1967 subject to the conditions. The order clearly states that persons stayed abroad for a period of 6 months can bring up to 5 kilogram of gold, though the benefit of concessional rate of duty of 10% is admissible for import of gold up to 1 kg. ( bold highlights as per the order in original) As such the seized gold is liable to confiscation under section -111(l) of the Customs Act, 1962 and not under 111(d) of the said Act. Therefore the allegation in the Show Cause Notice that gold is liable to confiscation u/s -11(d) is not sustainable." . The Original adjudicating authority further notes " As far as redemption under section 125 of the Customs Act, 1962 is concerned, I find that the statutory provisions are explicitly clear as mentioned below:-*

*(1) In case of prohibited goods, the authority may or may not redeem the goods but in case of other goods the authority has to mandatorily redeem the goods as quite obvious from the wordings, " the authority shall redeem the goods."*

*(ii) Where the owner is not known, the goods are to be redeemed to the person from whose possession, the same were seized.*

*From these statutory provisions it is clear that gold is to be redeemed as the same is not prohibited. There is no condition reg. ownership for the purpose of redemption of the goods as quite obvious from the statutory provisions which state that where the owner is not known, the goods are to be redeemed to the person from whose possession the goods were seized."*

9. In addressing the issue of re-export the Original adjudicating authority in para 22 notes " In this case the passenger has requested for re-export of the gold. In this regard, I find that the statutory provisions for re-export are governed under Section-80 of C.A.1962 which stipulates that where passenger declares true contents of his baggage as required under section-77 of the Customs Act, 1962 and it is found by him that the same are dutiable or prohibited then he can request to the proper officer, for temporary detention of the same for taking back the same at the time of his departure. This provision makes it abundantly deer that the proper officer will allow re-export of prohibited goods if requested by the passenger subject to the condition that the



*same are properly declared. As far as non declaration of the goods as required under section-77 of C.A.1962 is concerned, I find that the same needs adjudication in terms of section-124 of C.A.1962 and then re-export can be permitted under section-125 of the C.A.1962 (after taking appropriate \*action for non declaration by way of adjudication)."*

10. In view of the above the Government observes that the Original adjudicating authority has appropriately discussed the issues of the case and all the points raised by the Applicant department in respect of "Eligibility" "Allowing redemption" and the aspect of "re-export" have been suitably addressed. The Government is in agreement to the conclusions drawn in the above mentioned contentions.

11. Government observes that gold is a restricted item and its import is not prohibited if the importer is an eligible passenger. In the impugned case the Respondent's eligibility to import gold has been verified by the Original adjudicating authority. The impugned gold therefore cannot be considered prohibited. The Respondent has produced bills for the purchase of the gold, the ownership of the gold is therefore not disputed. Respondent does not have a history of previous offences. Therefore it would not be fair to dispossess him of the gold absolutely. However, as he did not declare the gold confiscation is justified. The Original adjudicating authority, keeping in mind the above facts has exercised his discretion to allow redemption of the gold. The Government notes that redemption of goods, not held as prohibited, is permitted as per section 125(1) of the Customs Act,1962. The Appellate authority has reduced the redemption fine to Rs. 10,00,000/- ( Rupees Ten lacs ) and also reduced the penalty to Rs. 2,00,000/- (Rupees Two lacs ). Government holds that the redemption fine and penalty imposed by the original adjudicating authority is appropriate.

12. Considering the submission of the applicant department and concern that gold smuggling should not be an attractive proposition, Government finds that reduction of redemption fine and penalty by the Commissioner (Appeals) was unwarranted. There are no circumstances requiring a lenient view. Government observes that redemption fine and penalty imposed by the Original adjudicating authority was appropriate in the facts and circumstances of the case.



13. In view of the above facts, Government holds that the Original adjudicating authority has rightly taken a reasonable view in the matter and allowed the gold on redemption fine of Rs. 25,25,000/- (Rupees Twenty five lakhs Twenty five thousand ) and penalty of Rs. 5,00,000/- ( Rupees Five lakhs)..

14. Revision applications filed by the Applicant passenger and Applicant department is accordingly decided on above terms.

*Shrawan*  
27/01/21  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

15-16  
ORDER No. /2021-CUS (SZ) /ASRA/

DATED 27.01.2021

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Shaikh Abdul Munaf, S/o Shri Shaikh Valli Saheb, No. 6/969, Noonepalli, Utukur, Rajamet, Kadappa. Andhra Pradesh - 516115.

Copy to:

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

**ATTESTED**

अधीक्षक  
Superintendent  
रिवीजन एप्लीकेशन  
Revision Application  
मुंबई इकाई, मुंबई  
Mumbai Unit, Mumbai

