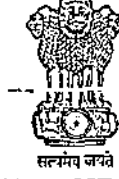


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 380/25/B/15-RA / 8205

Date of Issue 28.06.2021

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ORDER NO. 150/2021-CUS (SZ)/ASRA/MUMBAI DATED 17.06.2021 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.

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Applicant : Commissioner of Customs, Chennai.

Respondent : Shri Moinuddin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 349,350/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Commissioner of Customs, Chennai. (herein referred to as Applicant department) against the order C. Cus-I No. 349,350/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. On 05.03.2014 the officers of AIU intercepted the respondent as he was walking out of the green channel declaring the value of the dutiable goods carried by him as NIL. A personal examination of the respondent resulted in the recovery of nine gold bits from his pant pockets totally weighing 1000 gms, valued at Rs. 30,84,000/- ( Rupees Thirty lakhs Eighty four thousand ). In his statements recorded immediately after seizure he informed that the he was working in Kuwait for the last seven years and of the 1000 gms, 300 gms belonged to him and the rest belonged to his four friends who were his room mates.

3. After due process of the law vide Order-In-Original No. 218/27.03.2014 the Original Adjudicating Authority ordered confiscation of the gold, but allowed redemption for re-export on payment of Rs. 12,50,000 ( Rupees Twelve lakhs Fifty thousand) as redemption fine and imposed penalty of Rs. 2,50,000/- ( Rupees Two lakhs Fifty thousand) under Section 112 (a) and (b) of the Customs Act,1962 on the respondent.

4. Aggrieved by this order the Applicant department as well as the respondent filed appeals with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order C. Cus-I No. 349,350/2015 dated 29.06.2015 rejected the departments Appeal and reduced the redemption fine imposed from Rs.12,50,000/- to Rs. 6,00,000/- ( Rupees six lakhs), the penalty imposed was left unchanged.

5. Aggrieved with the above order the Applicant department had filed this this revision application interalia on the grounds that;

5.1 That the passenger, have contravened the Section 77 and 11 of Customs Act, 1962 read with Regulations 3 (1) of Foreign Exchange Management (Export and Import of Currency) Regulations 2000 which made the smuggled gold liable for absolute confiscation under Section 111 (d) and (l) of the Customs Act, 1962. The appellate authority without considering the following aspects has given an option to redeem the gold on payment of redemption fine of Rs. 6,00,000/- and penalty of Rs. 2,50,000/- for re-export.

5.2 That the eligibility of a passenger to clear the gold imported by him is covered under Notification No. 12/2012-Cus dated 17.03.2012 . That the said notification states that 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 and short visits, if any, made by this eligible passenger during the above said period of six months shall be ignored if the total duration of stay on such visit does not exceed thirty days can bring gold upto 1 kg and the duty has to be paid (g) 10% on the value of the gold and the duty has to be paid in foreign currency.

5.3 That Rule 6 of Baggage Rules, 1998 states that a passenger who stayed abroad for more than one year can bring gold jewellery (22 carat) to an extent of Rs. 1 lakh (female passenger) and to an extent of Rs.50,000/- (male passenger) and the same can be cleared from Customs without payment of duty.

5.4 That in the present case, the passenger did not declare the gold possessed by him under Section 77 of the Customs Act, 1962 and was not in possession of foreign currency for the payment of duty and that the passenger has not fulfilled the conditions stipulated under Notification No. 12/2012 and Baggage Rules. That the passenger was ineligible to import the gold and accordingly the Order-In-Appeal permitting the ineligible passenger to re-export the smuggled gold is incorrect in law.

5.5 That the decision of the appellate authority to allow the re-export of goods on payment of redemption fine is not acceptable as the passenger with an intention to smuggle did not declare the gold in his possession and

mis-declared the same in the Customs Declaration Card as 'NIL' and attempted to smuggle the gold out of the Airport.

5.6 That the appellate authority in his order has stated that the ownership of the gold was not alleged in the Show Cause Notice is not acceptable as the passenger himself in his voluntary statement given under Section 108 of Customs Act, 1962 has stated that the gold weighing 300 grams only is owned by him and the balance gold weighing 700 grams is owned by his roommates and that he carried the gold for monetary consideration of Rs. 5,000/- per 100 grams.

5.7 That the appellate authority vide para 7(ii) (c) has contended that the facts of the above case are totally different. That in the present case, the passenger in his voluntary statement has admitted that the only 300 grams of gold belongs to him and the balance belong to his roommates. That at the time of personal hearing he retracts his statement and claims ownership of the entire gold seized. That retraction made by him is an afterthought and to show that the statement recorded under Section 108 of the Act, is admissible.

5.8 That the order of the appellate authority has the effect of making smuggling an attractive proposition, since the passenger retains the benefit of redeeming the offending goods even when caught by Customs which totally works against deterrence.

6. Accordingly a show cause notice was issued to the respondent by the then Revisionary Authority under Section 129 DD of the Customs Act, 1962 to enable the respondent to file their counter reply. The respondent vide reply received on 31.08.2015 submitted that grounds raised by the Revision Applicant are not maintainable since the Order-in-Appeal speaks for itself and an opportunity for hearing be given. Meanwhile, respondent filed W.P. No.24230 of 2015 in the High Court of Madras under article 226 of the Constitution of India to issue writ of Mandamus directing the Government authority to implement the order passed by the Commissioner(Appeals-I) Chennai, No. 349-350/2015 dated 29.06.2015. The Hon'ble High Court disposed of the Writ Petition vide its order dated 31.08.2015 which was received in this office on 26.11.2015 with the direction to the petitioner to place all their submissions as to substantiate their case before Revisionary

Authority and upon hearing them, Revisionary Authority would pass the order within eight weeks of receiving the order.

7. In compliance of Hon'ble High Court's Order, personal hearings were as held in this case and the then Revision Authority decided the case vide its order No. 01/2016-CUS Dated 22.01.2016. Upholding the Applicant departments contention the Revisionary Authority disallowed the redemption and re-export of the gold allowed by the Appellate order and absolutely confiscated the gold.

8. The respondent again a filed W.P. No. 16682 of 2016 in the High Court of Madras against the order of the Revisionary Authority No. 01/2016-CUS Dated 22.01.2016 contending that;

8.1 The impugned order of the Revisionary authority has been passed by an officer, who was not vested with the jurisdiction to hear and adjudicate upon the matter. The reason according to the learned counsel for the petitioner, which propels the petitioner to take such a stand is the fact that the officer, who exercised the jurisdiction in the matter was of the same rank, as that of the Commissioner of Appeals whose order was assailed before him.

8.2 To be noted, the impugned order been passed by the Joint Secretary to the GOI, It is common ground that the Commissioner of Appeals holds the same rank as the Joint Secretary to GOI.

8.3 Therefore, according to the learned counsel, this singular fact has impregnated the impugned order with a jurisdictional flaw. In support of his submission, learned counsel for the petitioner relied upon the judgement of the Punjab and Haryana High Court in the NVR Forgings V/s UOI, 201+ (335) ELT 675.

8.4 Learned counsel for the petitioner further stated that a special leave Petition was preferred against the afore mentioned judgement of the Punjab and Haryana High Court, which was dismissed in Limine by the Supreme Court on 17.10 2016.

8.5 Accordingly the Hon'ble High Court set aside the order of the Revisionary authority (No. 01/2016-CUS Dated 22.01.2016 ) with liberty to the GOI to pass a fresh order within a period of eight weeks from the date

of the receipt of a copy of the order after corrective measures are taken. Further stating In case the requisite steps are not taken, respondents No.4, (Principle Commissioner of Customs, Chennai) will ensure compliance of the order dated 29.06.2015, passed by the Commisioner ( Appeals).

9. In view of the Hon'ble High Court of Madras order personal hearings in the case were scheduled on 09.03.2021, 06.04.2021 and 08.06 .2021. However neither the Applicant department nor the respondent in the case attended the scheduled hearings. The case is therefore being decided on basis of available records on merits.

10. The Government has gone through the facts of the case, and notes that it is an uncontested fact that the goods were not declared to the customs under Section 77 of the Act and the passenger passed through the green channel. In his declaration form he did not inform that he was carrying dutiable goods and had he not been intercepted he would have walked away with the impugned goods without declaring the same to Customs. The confiscation of the gold is therefore justified.

11. The main contention of the Department is that the passenger has accepted that he was carrying the gold for monetary consideration and had obviously concealed the gold, and the same had not been declared in the customs declaration card. The passenger has also not fulfilled the conditions stipulated under Notification No: 12/2012-Cus dated 17.03.2012 as amended and Rule 6 of the Baggage Rules. Therefore, it is pleaded that the passenger was not eligible to import the gold and accordingly the impugned Order-in-Appeal allowing redeeming of the goods on re-export is unlawful and has the effect of making smuggling an attractive proposition and be set aside.

12. Government however notes that the original adjudicating authority has considered the fact that the respondent has stayed abroad for more than seven years and is thus eligible to bring gold. Thus the import of gold by the respondent is not prohibited and therefore absolute confiscation in the case of an eligible passenger would be an order in excess. Further, there is no past history of such offence/violation by the respondent. The impugned gold was not ingeniously

concealed and the respondent claims ownership of the gold and its ownership is not disputed. Hon'ble Supreme Court of India in Hargovind Das K Joshi Versus Collector of Customs reported in 1992 (61) ELT 172 has set aside Absolute confiscation of goods by Collector without considering question of redemption on payment of fine although having discretion to do so, and remanded the matter to Collector for consideration of exercise of discretion for imposition of redemption fine as per Section 125 of Customs Act, 1962. Further, stating the option of redemption should be mandatorily extended to goods that are not held as prohibited as per section 125 of the Customs Act, 1962. Government also notes that even prohibited goods can also be allowed for redemption at the discretion of the judicial authority. The section also allows goods to be released to the person from whose possession or custody such goods have been seized. This general principle has been relied in case of Peringatil Hamza Vs CC (Airport), Mumbai 2014 (309) ELT 259 (Tri-Mumbai) and in the case of R. Mohandas Vs CC, Cochin 2016 (336) ELT 399 (Ker), the Hon'ble Kerala High Court .

13. Under the circumstances the Government opines that the Original adjudicating authority has judiciously used his discretion to allow the gold for redemption. The Appellate authority has also upheld the decision. Under the circumstances, Government considering the above mentioned contentions, is not inclined to interfere with the impugned Appellate order. The Revision Application is therefore liable to be dismissed.

14. Revision application is accordingly dismissed.

*Shrawan Kumar*  
17/6/21  
( SHRAWAN KUMAR )

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

ORDER No. 150/2021--CUS (WZ) /ASRA/

DATED 17.06.2021

To,

Shri Moinuddin, S/o Syed Shahbuddin, D. No. 4/587, Opp SBI & Road, Kadappa, Kadappa district, Andhra Pradesh.

Copy to:

1. The Commissioner of Customs, New Customs House, Meenambakkam, Chennai -27.

