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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. 380/63/B/16-RA/5722

Date of Issue 30.09.2020

ORDER NO. 197/2020-CUS (SZ)/ASRA/MUMBAI DATED 14.09.2020 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 Mohamed Rafeek

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 723/2015 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. 723/2015 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 Mohamed Rafeek a Srilankan citizen at the Anna International Airport, Chennai on 09.03.2015 as he tried walking out through the green channel of the arrival hall. Examination of his person resulted in the recovery of one gold chain from his pant pockets totally weighing 197 grams valued at Rs.5,47,660/- (Rupees Five lacs Forty seven thousand and Six hundred and sixty).

3. After due process of the law vide Order-In-Original No. 287/2015-16 AIRPORT dated 11.09.2015 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. 50,000/- (Rupees Fifty 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) allowed the redemption of the gold on payment of a redemption fine to 1,65,000/- for re-export and retained the penalty imposed as appropriate and allowed the Appeal.

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 Respondent had attempted to clear the gold without declaring it to the customs authorities and the declaration submitted did not contain the gold jewelry carried, as required under section 77 of the Customs Act, 1962; The respondent attempted to smuggle the gold by way of deep concealment, indicating that the respondent had a culpable mind to smuggle gold circumventing restrictions and prohibitions imposed; In his declaration card the respondent had left the value as blank; In spite of being ineligible to import gold he attempted to clear it; Being an ineligible person to import the gold the gold in question becomes prohibited; The respondent acted as a carrier for monetary consideration and he was not the owner of the gold; 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 smuggling of gold an attractive proposition, since the passenger retains the benefit of redeeming the gold even when caught by customs and 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. 18538 of 2016 before Hon'ble High Court of Madras for issuance of a writ of mandamus directing the respondent (Applicant department) to release the goods in terms of Order in Appeal 723/2015 dated 30.11.2015 passed by the Commissioner of Customs (Appeals-I) Chennai. The Hon'ble High Court of Madras disposed of the Writ Petition, directing the Respondent ie the Chief Commissioner of Customs Chennai *".....to release the gold jewelry, pursuant to the sale, within a period of three weeks, from the date on which the department realizes the money from the agency which has sold the jewelry. The money on being realized shall be*

transferred to the bank account of the petitioner, through proper banking channels within the stated period of three weeks. This order is subject to the petitioner complying with the conditions imposed in the order passed by the Commissioner of Customs (Appeals), ie payment of redemption fine and personal penalty and also giving the undertaking to comply with the Order of the revisional authority, in event of the Department succeeds in the revision”

7. In view of the above, personal hearings in the case were scheduled on 27.08.2018, 17.09.2018, 26.09.2018 21.11.2019 and 05.12.2019. Nobody attended the hearing on behalf of the Applicant department or Respondent. The case is therefore being decided exparte on merits.

8. The Government has gone through the case records. It is observed that the respondent had left the value of dutiable goods blank in the declaration form and 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.

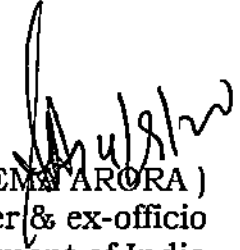
9. Government however notes that in this era of liberalization, Gold is a restricted item and its import is not prohibited. The gold was recovered from the Respondents pant pockets and there are no allegations that the gold was ingeniously concealed. There are no allegations that the respondent was involved in such offences earlier. Though the Respondent may have carried the same on behalf of someone else, considering other facts it would be an exaggeration to term the applicant as a carrier and dispossess him of the gold. Further, 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 right of a foreign national to wear gold ornaments while coming to India is re-iterated in *Re. Vigneshwaran Sethuraman Vs UOI*; 2014 (308) ELT 394 (KER.), The Hon'ble High Court of Kerala further has set aside the confiscation and penalty and

directed return of the gold and penalty paid. The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation. Under the circumstances, The Appellate authority, having considered the above aspects and previous decisions on such cases has rightly allowed redemption for re-export and Government agrees with the same. Under the circumstances the order of the Appellate authority is to be upheld.

10. In view of the above facts, Government is of the opinion that the order of the Appellate authority does not merit interference. The Revision Application is therefore liable to be dismissed.

11. Revision application is accordingly dismissed.

12. So, ordered.


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

ORDER No. 197/2020-CUS (SZ) /ASRA/MUMBAI

DATED 14.09.2020

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Mohamed Rafeek, 16, Ash-Shaheed Al Street, Kattankudy, Sri Lanka.
3. Shri A. Ganesh, Advocate, F. Block A179, IV Street, Annanagar, Chennai 600 102

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