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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

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F.No. 380/61/B/16-RA / 5717

Date of Issue 30.09.2020

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ORDER NO. 198/2020-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.

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**Applicant** : Commissioner of Customs, Chennai.

**Respondent** : Shri Mohamed Rabik

**Subject** : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 693/2015 dated 30.10.2015 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. 693/2015 dated 30.10.2015 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 two gold bars from the pockets of his jeans, totally weighing 233 grams valued at Rs. 6,43,080/- ( Rupees Six lacs Forty three thousand and Eighty).

3. After due process of the law vide Order-In-Original No. 161/2015-16 AIRPORT dated 24.06.2015 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. 60,000/- (Rupees Sixty 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 1,90,000/- 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, and therefore liable for absolute confiscation; 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 in his statement has stated that he acted as a carrier for monetary consideration and he was not the owner of the gold; The advocates retraction is an attempt to escape the clutches of the law and

the purchase documents have been fabricated at a later stage; 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 care ful 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;

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. 17970 of 2016 before Hon'ble High Court of Madras for issuance of a writ of mandamus directing the respondent (Applicant department ) to release the gold and give effect to the impugned order in Appeal. In reply the Applicant department informed that the Hon'ble High Court of Madras that a Revision Application has been filed before the revision authority in this regard and awaiting orders. The Hon'ble High Court of Madras issued the following orders:-

*(a) " The Writ petition is disposed of directing the respondent to release the goods (gold) for purpose of re-export subject to the petitioner complying with the conditions imposed in the order passed by the Commissioner (Appeals) i.e., payment of redemption fine for re-export and personal penalty and also giving an undertaking to comply with the order in original, in the event the Department succeeds in the revision, with a period of two weeks from the date of receipt of a copy of this order.*

*(b) Petitioner is directed to pay 5% of the cash amount of the value of the goods to the Commissioner, Customs, Chennai and get receipt from the commissioner within a period of one week, from the date of receipt of a copy of this order.*

*( c) In the event there is no stay in the Revision Petition that has been preferred by the, respondent, then it is hereby directed that the main revision petition shall be disposed of within period of eight weeks from the date of receipt of a copy of this order. No costs."*

7. In view of the above, similar pending cases were taken up for hearing, prioritizing the disposal of older cases, prioritizing the disposal of applications on the basis of its length of pendency and 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. A proper declaration 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 observes that the Applicant department has submitted that the gold was not declared and therefore warrants absolute confiscation. In addressing this submission Government notes the Appellate authority has accepted that the respondent is an eligible passenger to import gold as fulfils the conditions required as per notification no. 12/2012, further stating that the eligibility mitigates the issue and does not justify absolute confiscation. The Appellate order also finds that the respondent does not have a recorded history of previous offences. Government notes, that Gold is a restricted item and its import is not prohibited. The gold was recovered from the Respondents pants pockets and therefore not ingeniously concealed. The above aspects of the case thoroughly negates absolute confiscation.

10. 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. In the case *Hargovind Das K. Joshi v/s Collector of Customs* reported in 1992 (61) E.L.T. 172 (S.C.), The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. Government therefore holds that dispossessing the Applicant of the gold for non-declaration appears to be very harsh and unjustified. In the case of *Gauri Enterprises Vs CC, Pune 2002 (145) ELT (705) (Tri-Bangalore)* the CESTAT held that if similar goods have been released on fine earlier, selective absolute confiscation is not called for as absolute confiscation should be an exception rather than a rule. Section 125 of the Customs Act, 1962 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. Under the circumstances, Government observes that the Appellate authority, has considered the above aspects and previous decisions on such cases has rightly allowed redemption and Government agrees with the same. The order of the Appellate authority is therefore liable to be upheld.

11. 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.

12. Revision application is accordingly dismissed.

12. So, ordered.

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

ORDER No. 198/2020-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 Rabik, 39, Quaid E Millath Street, Tirupanandal Thiruvudai, Marudur, Tanjore, Tamil Nadu.
3. Shri A. Ganesh, Advocate, F. Block A179, IV Street, Annanagar, Chennai 600 102

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