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SPEED POST**



F.No. 380/35/B/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue..... 31/11/14

Order No. 22 /14-cus dated 29.1.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 196/2013-Air dated 11-02-2013 passed by the Commissioner of Customs (Appeals), Custom House, Chennai.

Applicant : Commissioner of Customs, (Airport & Air Cargo), New Customs House, Meenabakkam Airport, Chennai.

Respondent : Mr. Mohamed Ikran Mohamed Inishan, c/o S. Palanikumar, Advocate, No. 10., Sunk RamStreat, Chennai-600 001.

ORDER

This revision application is filed by applicant Commissioner of Customs, (Airport & Air Cargo), New Customs House, Meenabakkam Airport, Chennai against the Order-in-Appeal No. 196/2013-Air dated 11-02-2013 passed by the Commissioner of Customs (Appeals), Chennai, with respect to Order-in-Original No. OS No. 27/2012 Air dated 30/08/2012, Chennai passed by the Joint Commissioner of Customs, Air Port, Chennai.

2. Brief facts of the case are that the respondent passenger was intercepted by Customs Air Intelligence Unit at green channel of arrival hall at Chennai Airport. On examination/ search of baggage and person gold in crude for weighing to 150 grms (24 carat) valued at Rs. 4,28,100 was found concealed in his wallet and three Talismans tied to the waist rope worn by the respondent. The respondent in his statement recorded under section 108 of Customs Act, 1962 interalia admitted that Mr. Mohamed Ikran Mohamed Inishan in his statement dated 03-04-2012 had admitted that the said crude gold were given to him at Colombo Airport by an unknown person to be handed over to a person who would be waiting outside Chennai Airport; that he had kept concealed the said 150 gms crude gold and intended to take them without declaring to Customs; he also admitted that the crude gold were not bought by him and not owned by him and that he was carrying the same only for monetary benefit of Rs. 10,000/-; and that he had committed this offence for the first time and requested for leniency.

2.1 The respondent was Shri Lankan National as such he was not eligible to import gold in terms of Notification No. 31/2003-Cus dt. 01-03-2003. The said gold was commercial in nature. The gold was imported by concealment in his person and wallet. The respondent was simply a carrier and carried the said for someone else for monetary consideration of Rs. 10000/-. Import of gold in trade quantity that too non declared by a carrier does not constitute a part of bonafide baggage in terms of section 79 of Customs Act, 1962 and violates the provisions of Baggage Rules, 1998, section 77,79,11 of Customs Act, 1962, para 2.20 of FTP 2009-20014 and also the provision of section 3 (1) & 11 (1) of Foreign Trade (Development and

Regulation) Act, 1992. The adjudicating authority after following due process of law confiscated the said goods under section 111 (d) (l) & (m) of Customs Act, 1962. A penalty of Rs. 43,000/- was also imposed on the said passenger under section 112 of Customs Act, 1962.

3. Being aggrieved by the said order-in-original, applicant department filed appeal before Commissioner (Appeals), who allowed re export of the gold on payment of redemption fine of Rs. 85000/- and reduced personal penalty to Rs. 25000/-.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 The Order-in-Appeal passed by the Commissioner (Appeals) permits the goods to be re-exported on payment of fine of Rs. 85,000/- and penalty of Rs. 25,000/- under section 125 of the Customs Act, 1962. However, section 125 of the Customs Act, 1962 gives the option to pay fine in lieu of confiscation the provision does not empower the adjudicating authority to allow re-export of goods on payment of fine.

4.2 While passing the Order-in-Original the adjudicating authority had found that under section 125 option of redemption in lieu of confiscation is not mandatory to goods the importation or exportation whereof is prohibited under this act or under any other law for the time being in force. In this case the passenger had attempted to smuggle the gold by way of ingenious concealment and by way of non declaration knowing well that he was not an eligible passenger to import gold and thus had a culpable mind to smuggle them into India without payment of duty. Further it is admitted fact that the passenger is not the real owner of the gold that had been seized from him. The crude gold were given to him by an unknown person at Colombo airport to carry and smuggle into India for a monetary consideration of Rs. 10,000/- and to hand over to a person who would be waiting outside Chennai

airport. This clearly proves that the passenger had brought the gold only for a financial consideration.

4.3 It was held in CESTAT order No. 1980-1995/2009 dt. 24-12-2009 in appeal Nos. C/40-55/2009 that passengers bringing goods for someone else for consideration need not be given the option of redeeming the goods not belonging to them. Further in WP 34102/2003 dt. 13-09-2010 the Hon'ble High Court, Madras has upheld the denial of redemption by the Appellate Authority and Revision Authority to passenger carrying goods on behalf of someone else, for monetary consideration. Even though the above grounds were stated by the adjudicating authority while upholding absolute confiscation, the appellate authority has allowed re-export without sighting any ground/grounds for overruling the above reasoning. The facility of re-export under the act is offered only under section 80 and that too provided a true declaration is made. Since, in this case, the passenger was not eligible to bring the gold into India and the same was not declared to Customs, he is not eligible to claim re-export offered under section 80 of the act as well. The order of the Appellate Authority has the effect of making smuggling an attractive proposition since even when caught by customs the passenger retains the benefit of redeeming the offending goods by way of re-export which works against deterrence.

The applicant department finally pleaded to set aside the Order-in-Appeal and restore the Order-in-Original.

5. Personal hearing was scheduled in this case on 24-07-2013, 31-10-2013 and 16-12-2003. Nobody appeared for personal hearing.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government notes that the respondent passenger who was a Shri Lankan National imported gold in trade quantity and did not declare the same before customs. The gold was cut in pcs and concealed in wallet and Talismans worn by the respondent. In his statement recorded under section 108 of

Customs Act, 1962 the respondent had admitted that the said gold was carried by him to someone else for monetary consideration of Rs. 10000/-. Since the gold imported in concealed manner and in trade quantity and that too not declared, so the same cannot be treated as bonafide baggage in terms of section 79 of Customs Act, 1962. The said gold is imported in violation of Foreign Trade the provisions of section 77, 79, 11 of Customs Act, 1962, para 2.20 of Exim Policy 2009-2014 and also the provision of section 3 (3) and 11 (1) of Foreign Trade (Development and Regulation) Act, 1992. The adjudicating authority after following due process of law absolutely confiscated the said gold under section 111 (d) (l) & (m) of Customs Act, 1962. Penalty of Rs. 43000/- was also imposed on the passenger under section 112 of Customs Act, 1962. The Commissioner (Appeals) has allowed re export of gold on payment of redemption fine of Rs. 85000/- and reduced personal penalty to Rs. 25000/-. Now in this revision application the applicant department has challenged the order of Commissioner (Appeals) contending that the impugned gold has been imported undeclared by the respondent passenger that respondent was simply a carrier, and under these circumstances allowing redemption by the Commissioner (Appeals) is against the order of Hon'ble CESTAT No. 1980-1995/2009 dt. 24-12-2009

8. Government notes that applicant department has argued that gold jewellery did not belong to the respondent passenger as he was only carrier therefore goods were rightly confiscated absolutely by original authority. The adjudicating authority has categorically held that said passenger was a carrier who brought gold for somebody else. Adjudicating authority in his findings portion of Order-in-Original OS No. 502/11 dt. 11-10-2011 has observed as under:-

" In his voluntary statement dated 11-10-2011 and during the personal hearing, he admitted the offence and stated that for monetary consideration he received the gold jewellery from a person in Singapore to deliver the same at Chennai without declaring to the Customs. "

9. The Commissioner of Customs (Appeals) in his Order-in-Appeal 916/2012 dt. 08-08-2012 at his finding portion has observed as under:-

" During the personal hearing before the lower adjudicating authority the applicant admitted the offence and stated that for monetary consideration he received the impugned gold jewellery from a person in Singapore to deliver the same at Chennai without

declaring to the Customs to evade the Customs duty. Therefore, the order of absolute confiscation of the impugned goods and the imposition of penalty on the applicant by the lower authority is unassailable. "

But Commissioner (Appeals) in his order allowed the redemption on payment of fine. So this order is self contradictory.

10. Government notes that absolute confiscation in such cases is upheld in the judgments of Hon'ble Tribunal Order No. 1980-1995/09 dated 24.12.09, in the case of G.V. Ramesh & others Vs. CC Air Chennai 2010 (252) ELT 0212 (T-Mad).

Government notes that CESTAT in its said Final Order has upheld as under:-

Jewellery Smuggling- Evidence- passengers intercepted carrying gold jewellery into India for someone else-submission that passengers intercepted before they could go to proper officer of Customs and declare gold and foreign currency-Held: Disembarkation Card filled and signed by passengers declaring either nil or small amount of Rs. 2000 or Rs. 1000 as compared to gold jewellery brought ranging from Rs. 4,27,700/- to 4,70,940- wrong declaration cases not covered by C.B.E. & C. Circular No. 9/2001-Cus., dt. 22-02-2001- Non-declaration. established-clear that passengers had no intention to go to Red Channel-statements given on date of seizure as well as subsequently also support case of department.

Confiscation-Gold jewellery -Smuggling- Gold jewellery confiscated from passengers coming into India-Non-declaration established-Submission that import of gold in form of Jewellery not prohibited under Foreign Trade Policy and hence not confiscable under section 111 (d) of Customs Act, 1962-Held; Commissioner confiscated gold jewellery under sections 111 (d), (I) and (m) ibid- Even if sub-section (d) ibid not applicable, non-declaration render them confiscable under section 111 (I) ibid.

Redemption of confiscated gold to carriers not allowable-Ownership of gold-Gold jewellery recovered from passengers bringing it for someone else and absolutely confiscated as not declared- submission that gold jewellery not prohibited item and hence cannot be absolutely confiscated-Held: Passengers bringing jewellery for someone else for a consideration and same not belonging to them-Finding of Commissioner that jewellery not belonged to them upheld-No warrant: in law to allow redemption to passengers-section 125 of Customs Act 1962. "

10.1 Government also notes that Hon'ble High Court of Bombay in the case of UOI Vs Mohammed Aijaj Ahmed WP No.1901/2003 decided on 23-07-2009 reported as 2009 (244) ELT 49 (Bom.) has set aside the order of CESTAT Tribunal ordering to allow redemption of gold and upheld the order passed by Commissioner of Customs ordering absolute confiscation of gold. In this case the gold did not belong to passenger Mr. Mohammed Aijaj Ahamed who acted as carrier of gold. The said order of Bombay High Court was upheld by Hon'ble Supreme Court in its decision reported as 2010 (253) ELT E83 (SC).

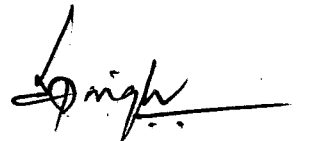
10.2 In the case of S. Faisal Khan Vs. Joint Commissioner of Customs in W.P No. 34102 of 2003-Madras High Court vide order dtd. 13-09-2010 has held that

"... The orders passed by the original authority, appellate authority and the revisional authority are cogent and supported by reasons. The authorities took note of the voluntary statement recorded under section 108 of the Act, wherein the petitioner had categorically admitted that he was taking the currency clandestinely on behalf of one Abdullah for monetary consideration. This particular evidence was held to be acceptable and cannot be brushed aside and there is no record to show that the statement of the petitioner was recorded under duress/pressure and the same was not voluntary. It is settled legal proposition that statement recorded under section 108 of the act is admissible unlike a statement recorded by a police officer. Thus, the appellate authority and the revisional authority considering the peculiar facts and circumstances of the case, the nature of concealment of currency and the fact that the petitioner was carrying the currency on behalf someone else for monetary consideration, rejected the request for redemption. Therefore, I find no valid reasons to interfere with the concurrent finding of the three authorities....."

11. In view of the principles laid down in above said goods, the original authority had rightly ordered absolute confiscation of said gold in this case. The impugned Order-in-Appeal passed by Commissioner (Appeals) is self contradictory and Commissioner (Appeals) has erred in allowing redemption of said gold by ignoring the case laws cited above. Government therefore sets aside the impugned Order-in-Appeal and restores the impugned Order-in-Original.

12. The revision application is disposed off in above terms.

13. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

Commissioner of Customs,
(Airport & Air Cargo),
New Customs House,
Meenabakkam Airport, Chennai.

ATTESTED


(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए / Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 22 /14-Cus Dated 29.1.2014

Copy to:

1. The Commissioner of Customs (Appeals), Custom House, 33 Rajaji Salai, Chennai-600001.
2. The Joint Commissioner of Customs, Air Cargo Complex, Chennai-600001.
3. Shri.S. Palanikumar, Advocate, No. 10, II Floor, Sunku Ram Street, Chennai-1.
4. PS to JS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



(T.R.Arya)

SUPRINTENDENT (REVISION APPLICATION)