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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. 380/109/B/2016-RA / 5500

Date of Issue 28/11/19

ORDER NO. 144/2019- CUS (SZ)/ASRA/MUMBAI DATED 15.11.2019 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 : Smt. Faridha Banu

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 18/2016 dated 29.01.2016 passed by the Commissioner of Customs (Appeals-I), 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. 18/2016 dated 29.01.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Smt. Faridha Banu at the Anna International Airport, Chennai on 07.06.2015 after clearing herself from customs at the green channel and was proceeding towards the exit. Examination of her baggage resulted in the recovery of four gold pieces totally weighing 661 grams valued at Rs. 17, 82,056/- (Rupees Seventeen lacs Eighty two thousand and Fifty six). The gold was indigenously concealed in the two "Kinder chocolate" wrappers packets kept in a white carton box.

3. After due process of the law vide Order-In-Original No. 304/2015-16/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. 1,75,000/- (Rupees One lac Seventy Five 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), Commissioner (Appeals) vide his order C. CUS-I No. 18/2016 dated 29.01.2016 allowed the gold to be redeemed for re-export on payment of Rs. 4,00,000/- (Rupees Four lacs) as redemption fine and upheld the penalty imposed and partially allowed the appeal of the Respondents.

5. Aggrieved with the above order the Applicant department has filed this revision application inter alia on the grounds that;

5.1 The Order of the Commissioner (Appeals) allowing re-export of the seized gold on payment of redemption fine and penalty is neither legal nor proper in as much as the passenger had attempted to smuggle the gold by way of deep concealment inside "Kinder chocolate" packets in her checked

in baggage; On being questioned whether she was in possession of gold/contraband in her baggage, she replied in the negative and had mentioned "NIL" in the dutiable goods column in the Customs declaration form; In her voluntary statement she stated that the gold was given to her by an unknown person outside the airport in Kuwait and was offered Rs. 20,000/- for the job; Passenger had failed to make a declaration as required under section 77 of the Customs Act, 1962; The adjudicating officer had in the order in original clearly stated that the passenger was in eligible to import gold; The fact remains that had she not been intercepted by the officers of Customs she would have walked away with the gold without payment of duty; The order in Appeal permitting an ineligible passenger to re-export the gold is incorrect in law; The retraction given by the assessee later and claiming the gold is an after thought.

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the impugned Order in Appeal be set aside and /or any other order as deemed fit.

6. In view of the above, personal hearings in the case were scheduled on 28.08.2018, 27/28.11.2018, 19/20.11.2018 and 11.10.2019. Nobody attended the hearing on behalf of the Applicant department or Respondent. The case is therefore being decided *ex parte* on merits.

7. The Government has gone through the case records. It is observed that the respondent did not declare the gold and it was concealed ingeniously inside "Kinder chocolate" packets in her checked in baggage. The Respondent had concealed the gold deliberately so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a mere case of mis-declaration. The Respondent replied negatively when questioned whether she was carrying gold and had mentioned "NIL" in the dutiable goods column in the Customs declaration form. The said offence was committed in a premeditated and clever manner and clearly indicates *mens rea*, and that the Applicant had willfully hidden the gold ingeniously and if he was not intercepted before the exit, the gold would have been taken out without payment of customs duty.

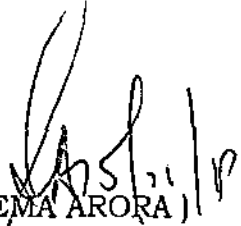
8. The above acts have therefore rendered the gold for absolute confiscation and the Respondent liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating

Authority has rightly confiscated the gold absolutely and imposed penalty. The impugned Revision Application is therefore liable to be upheld and the order of the Appellate authority is liable to be set aside.

9. Accordingly, The impugned Order in Appeal No. C. CUS-I No. 18/2016 dated 29.01.2016 passed by the Commissioner of Customs (Appeals-I), Chennai is set aside. The order of the Original Adjudication authority is therefore upheld as legal and proper.

10. Revision application is accordingly allowed.

11. So, ordered.


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

ORDER No. 44/2019-CUS (SZ) /ASRA/

DATED 15.10.2019

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Smt. Faridha Banu, 5/95 1, Ellaiamman Koli Street, Theradi Thiruvottiyur, Chennai 600 019.

Copy to:

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