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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

F.No. 380/53/B/14-RA/5246

Date of Issue 11/12/19

ORDER NO.53/2019-CUS (SZ)/ASRA/MUMBAI DATED 05.12.2019 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 : Shri Maraikkayar

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 1795/2013 dated 05.12.2013 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. 1795/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Marakkayar at the Anna International Airport, Chennai on 23.04.2013 at the green channel. He was found carrying eleven gold chains totally weighing 51 grams valued at Rs. 1,24,800/- (Rupees One lac twenty four thousand Eight hundred).

3. After due process of the law vide Order-In-Original No. 453/Batch A dated 23.04.2013 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. 13,000/- (Rupees Thirteen 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) vide his order C. CUS-I No. 1795/2013 dated 05.12.2013 allowed the gold to be redeemed for home consumption on payment of Rs. 10,000/- (Rupees Ten thousand) as redemption fine and reduced the penalty imposed to Rs. 5,000/- (Rupees Five thousand) and partially allowed the appeal of the Respondent.

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) has not given any reason *on why absolute confiscation is not correct*; The absolute confiscation of the gold has been upheld in other cases by the Appellate authority as well as the Revision authority, wherein the gold has been brought by carriers; The Hon'ble High court in the case of UOI vs Mohamed Aijaj Ahmed reported in 2009 (244) ELT 49 (BOM) has set aside the order of CESTAT allowing

redemption of the gold and upheld absolute confiscation of the gold; It is apprehended that the impugned order if implemented would jeopardize the interest of revenue irreparably and the likelihood of securing the revenue interests as per the original order in the event of its restoration during this revision process would be grim.

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the impugned Order may be forthwith stayed.

6. In view of the above, personal hearings in the case were scheduled on 22.10.2018, 19/20.11.2018 and 28.08.2019. 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 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.

8. However, gold is a restricted item and its import is not prohibited. There are no allegations that the gold was *ingeniously concealed*. *The respondent does not have an history of previous offences*. The quantity of the gold under import is small and 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. Under the circumstances, absolute confiscation in the case is harsh and unjustifiable. The ownership of the gold is not disputed and considering overall circumstances of the case in the wake of liberalized policy of the Government, the Appellate order has set aside absolute confiscation.

9. In view of the above facts, Government is of the opinion that the Appellate authority has rightly taken a lenient view in the matter and allowed the gold on

redemption fine and penalty. The Revision Application is therefore liable to be dismissed.

10. Revision application is accordingly dismissed.

11. So, ordered.

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

ORDER No. 63/2019-CUS (SZ) /ASRA/

DATED 12.12.2019

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Marriakkayar, S/o Samsudeen, D. No. 4-77, T. Mariyur, Mariour P O, Kadaladi Taluk, Ramanathapura 623 703.

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