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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. 380/152/B/16-RA

Date of Issue 01/08/2018

ORDER NO. 535/2018-CUS (SZ)/ASRA/MUMBAI DATED 23.07.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, International Airport Tiruchirappalli.

Respondent : Ganesan Singaram

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 63/2016-TRY (CUS) dated 04.04.2016 passed by the Commissioner of Customs (Appeals-II), Tiruchirappalli.



ORDER

This revision application has been filed by The Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order 63/2016-TRY (CUS) dated 04.04.2016 passed by the Commissioner of Customs (Appeals-II), Tiruchirappalli.

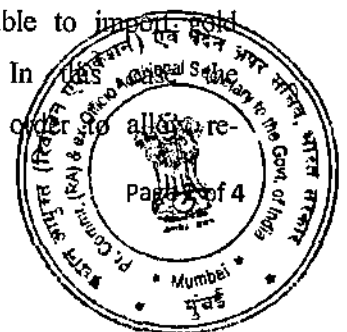
2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, at the Tiruchirappalli International Airport on 06.10.2015, examination of his person resulted in recovery of four gold chains totally weighing 36.8 grams valued at Rs. 89,584/- (Rupees Eighty Nine thousand Five hundred and Eighty four) and two Johnnie Walker 1ltr whiskey bottles.

3. The Original Adjudicating Authority, vide order No. 454/2015 dated 07.10.2015 absolutely confiscated the gold mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. But allowed redemption of the two Johnnie Walker 1ltr whiskey bottles on payment of Rs. 2,500/- A Personal penalty of Rs. 15,000/- was imposed 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) Tiruchirappalli, vide order in appeal No. 63/2016-TRY (CUS) dated 04.04.2016 the Commissioner of Customs (Appeals-II), Tiruchirappalli apart from the above reliefs allowed redemption of the gold on payment of Rs. 30,000/- as redemption fine.

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

5.1 Both the Order in original and the Order of the Commissioner (Appeals) is neither legal nor proper; the respondent had tried to smuggle the gold by not declaring the said goods; The Respondent has contravened the section 77 and 11 of the Customs Act, 1962 and therefore the gold is liable for absolute confiscation; The gold was carried for monetary reasons for someone else; The respondent has stayed abroad only for four days and did not have foreign currency for payment of customs duty and hence ineligible to import gold under Notification No. 12/2012 and Baggage rules; In this case the Respondent has not filed any declaration and hence the order to allow re-



export is not in order; The respondent himself stated that he did not declare the gold to avoid paying duty and did not declare the gold when enquired by the officers; The Appellate order upholding re-export is not proper and legal; The absolute confiscation of the gold in the order in original is proper and legal.

5.2 The Revision Applicant prayed for absolute confiscation of the gold, and further order as the Revision Authority as deemed fit.

6. In view of the above, the Respondent was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was held on 06.07.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. In his written reply he interalia submitted that

6.1 The Applicant had purchased the gold from his own earnings; the gold was not concealed but kept in his pant pocket; There is no allegation that the respondent had not declared the gold; He was all long under the control of the officers at the red channel and there is no allegation that he did not pass through the green channel; Gold is not a prohibited item and can be released on payment of redemption fine and penalty; Baggage rule will apply when goods are found in baggage; Goods must be prohibited before export or import simply because of non-declaration goods cannot become prohibited; The gold was purchased from his own earnings; The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration. Thus, mere non-submission of the declaration cannot be held against the respondent.

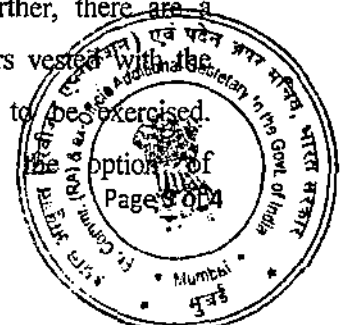
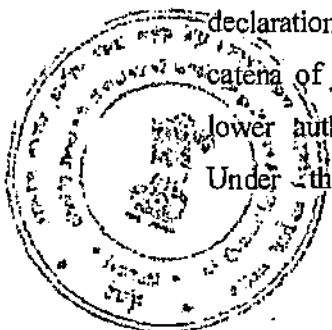
6.2 The respondent cited case laws in support of his case and prayed that the Revision application may be dismissed and render justice.

7. The Government has gone through the case records it is observed that the respondent did not cross the green channel. The ownership of the gold is not disputed.

There is no indigenous concealment. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. Further, there are a

catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised.

Under the circumstances, the Order-in-Appeal has rightly extended the option of



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redemption of the gold on payment of redemption fine and penalty. Government does not find any infirmity in the order.

9. In conclusion, the Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 63/2016-TRY (CUS) dated 04.04.2016 passed by the Commissioner of Customs (Appeals), Tiruchirapally, is upheld as legal and proper.

10. Revision application is accordingly dismissed.

11. So, ordered.

(Signature)
23.7.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁵³⁵ /2018-CUS (SZ) /ASRA/Mumbai. DATED 23.07.2018

To,

1. The Commissioner of Customs,
International Airport,
Pudukkottai Road, Sembattu,
Tiruchirappally 620 007.
2. Shri Ganesan Singaram
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

Copy to:

1. The Commissioner of Customs (Appeals), Tiruchirappally.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED

(Signature)
17/8/18
SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

