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SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 380/99/B/14-RA/387

Date of Issue 29/08/2018.

ORDER NO. 631/2018-CUS (SZ)/ASRA/MUMBAI DATED 16.08.2018 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, Central Excise and Service Tax.
Hyderabad.

Respondent : Shri Gurbaj Singh

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 15/2014-15 (H-II) dated 22.07.2014 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Hyderabad



ORDER

This revision application has been filed by The Commissioner of Customs, Central Excise and Service Tax, Hyderabad (herein referred to as Applicant) against the order 15/2014-15 (H-II) dated 22.07.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

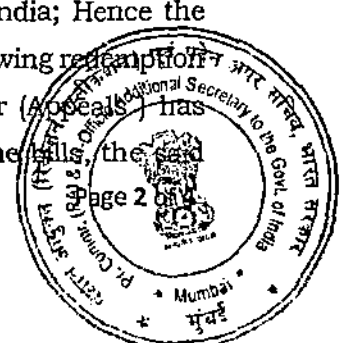
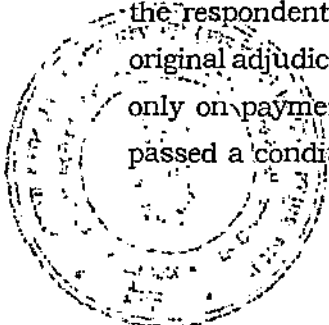
2. Briefly stated facts of the case are that the Officers of Customs intercepted the Shri Gurbaj Singh, (herein referred to as Respondent) at the Hyderabad International Airport on 05.02.2014 while passing through the green channel. Examination of his person resulted in recovery of one gold chain and one gold totally weighing 202 grams valued at Rs. 6,08,020/- (Rupees Six Lakhs Eight thousand and twenty).

3. The Original Adjudicating Authority, vide order No. 35/2014-Adjn.Cus(ADC) dated 14.03.2014 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 gold on payment of a fine of Rs. 50,000/- and appropriate customs duty. A Personal penalty of Rs. 25,000/- 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, Central Excise and Service Tax, Hyderabad, Commissioner (Appeals) Hyderabad, vide his order No. 15/2014-15 (H-II) dated 22.07.2014, held that as the gold was brought in exchange of the gold taken by the Respondent abroad, only the difference between the new gold purchased and the old gold taken abroad is liable for duty. The redemption fine was reduced to Rs. 25,000/- and penalty was also reduced to Rs. 10,000/-, subject to verification of the bills of exchange of the gold.

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

5.1 The Respondent had gone abroad on 31.01.2014 and returned on 05.02.2014 after a short visit, therefore he was ineligible to import gold at concessional rate of duty; No exemption for re-imported jewelry is given to international passengers of short stay abroad; Goods taken abroad brought back has to back as such, There is no statutory provision or exemption notification providing exemption from import duty for exchanged /replaced articles; The Respondent has not produced any export certificate; Moreover there is no evidence that the gold taken abroad was Indian origin or that the that the gold brought by the respondent is from the sale proceeds of gold articles taken out of India; Hence the original adjudicating authority was correct in confiscating the gold and allowing redemption only on payment of Fine, Penalty and customs duty; The Commissioner (Appeals) has passed a conditional order subject to reverification of the genuiness of the



verification involves overseas verification which amounts to DENOVO and as such the Appellate order is beyond the scope and ambit of section 128(3) of the Customs Act,1962 and therefore deserves to be set aside and the order of the Original Adjudicating Authority are to be upheld.

5.2 The Revision Applicant prayed for setting aside the order of the the Appellate authority or such an order as deemed fit.

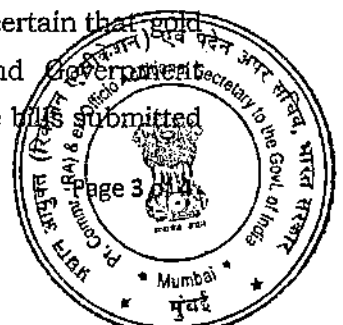
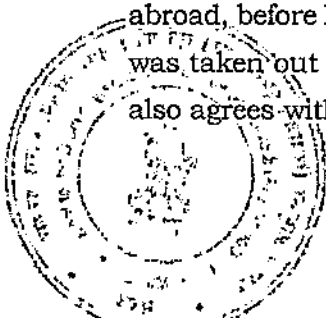
6. In view of the above, the Respondent was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was held on 17.07.2018.

7. The Respondent reiterated that the old gold worn by him were exchanged for new gold in Dubai, but did not bring it to notice of the officers at the time of interception due to tension; Due to ignorance he did not declare it to the officers; there is no prohibition for the import of the said goods; The gold was on his person and it was not concealed; As he had worn the gold it should have been considered not have been considered as part of his baggage; In the case of Vigneswaran Sethuraman vs UOI 2014 (308) ELT 394 (Ker) The honble High Court has held that gold worn by the petitioner and not carried in his baggage, it was not required to be declared as the body of the passenger cannot be said to be baggage; The respondent was not aware that the procedure to declare the gold before going to Dubai; If the gold is again taxed in India it would amount to double taxation; The Commissioner (Appeals) has ordered for re-verification and not verification as the same has been already done by the proper authority previously, and the same can be caused for re-verification whenever required;

7.2 The Respondent prayed that the revision application may be dismissed and the gold be released to the Respondent.

8. A personal hearing in the case was scheduled to be held on 17.07.2018 the Advocate for the respondent Shri R. V. Shetty attended the hearing along with the respondent, he re-iterated the order of the Commissioner (Appeals) and prayed that the Order in Appeal be upheld and the Revision Applications be dismissed. Nobody from the department attended the personal hearing.

9. The Government has gone through the case records. The Respondent is not eligible for concessional rate of duty as he does not fulfil the conditions set therein. It is observed that the respondent did not obtain an export certificate as required when taking the gold abroad, before leaving the country, and therefore there is no evidence to ascertain that gold was taken out of the country. The Respondent has exchanged the gold and Government also agrees with the contention of the Applicant that the verification of the bills submitted



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by the respondent requires overseas verification. Section 20 of the Customs Act, 1962, governing re-importation of the goods, is very clear that goods re-imported are liable to duty and are subject to all conditions and restrictions to which like goods are subject. Even if it is established that the gold ornaments are brought by the passenger are purchased out of the part sale proceeds of the gold ornaments taken from India it has to suffer customs duty. The Government therefore holds that the findings in the order of the Commissioner (Appeals), holding that only the difference of the gold taken out of India and the gold under import is liable for confiscation is therefore incorrect. The entire quantity of gold illegally by the Respondent is liable for confiscation. The order of the Original Adjudicating Authority is therefore required to be upheld and the impugned order of the Commissioner (Appeals) is liable to be set aside.

10. The Government therefore sets aside the impugned Order-in-Appeal No. 15/2014-15 (H-II) dated 22.07.2014 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Hyderabad. The order of the Original Adjudicating Authority, No. 35/2014-Adjn.Cus(ADC) dated 14.03.2014 is upheld as legal and proper.

11. Revision application is partly allowed on above terms.

12. So, ordered.

Ashok Kumar Mehta
16.8.18

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

ORDER No. ⁶³¹/2018-CUS (SZ) /ASRA/MUMBAI, DATED 16.08.2018

To,

1. The Commissioner of Customs, Central Excise and Service Tax.
7th Floor, Kendriya Shulk Bhavan,
L. B. Stadium Road,
Basheer Bagh
Hyderabad 500 004.
2. Shri Gurbaj Singh
House No. 3-6-69/B/15,
Avantinagar, Basheer Bagh
Hyderabad 500 029.

Copy to:

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

ATTESTED

S.R. Hirulkar
29.8.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

