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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. 380/46/B/16-RA / 1293

Date of Issue 12.10.2018

ORDER NO. ⁶⁸³⁻⁶⁸⁴ A /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 02.08.2018 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 : Principal Commissioner of Customs (Airport), Chennai.

Respondent : Shri Vishal Chand Jain

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 333/2015 dated 26.06.2014 & 404/2015 dated 24.08.2015 by the Commissioner of Customs (Appeals -I), Chennai .



ORDER

This revision application has been filed by Principal Commissioner of Customs, Chennai, (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 333/2015 dated 26.06.2014 & 404/2015 dated 24.08.2015 by the Commissioner of Customs (Appeals -I), Chennai .

2. Briefly stated the facts of the case is that the applicant arrived at the CSI Airport on 13.07.2014. Examination of his baggage and person resulted in the recovery of seven gold bars totally weighing 4450 gms valued at Rs. 1,14,46,646/- (Rupees One crore Fourteen lakhs Forty six thousand Six hundred and Forty six). The gold bars were rolled in a pair of jeans kept in the checked stroller bag.

3. After due process of the law vide Order-In-Original No. 44/27.04.2015 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, But allowed redemption of the gold for re-export on payment of a redemption fine of Rs. 55,00,000/- under section 125 of the Customs Act, 1962 and imposed penalty of Rs. 11,00,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the Respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus-I No. 333/2015 dated 26.06.2014 reduced the redemption fine to Rs. 20,00,000/- (Twenty Lakhs) and also reduced the penalty to Rs. 5,00,000/- (Five lakhs). An appeal was also preferred by the Applicants which was dismissed by the Commissioner (Appeals) vide his order No. 404/2015 dated 24.08.2015 as a decision had already been taken on the issue vide the order in appeal No. 333/2015 dated 26.06.2014.

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

5.1 The Order of the Commissioner (Appeals) is neither legal nor proper; Both the orders of the Lower authority and the Commissioner (Appeals) allowing re-export are neither legal nor proper as the Respondent had attempted to smuggle the gold through deep concealment in his jeans; No declaration was made for the said gold as required under section 77 of the Customs Act, 1962; the respondent had a culpable mind to smuggle the gold without payment of duty; The Respondent is not an eligible passenger as he had not fulfilled any of the conditions per notification No. 12/2012 Cus dated 17.03.2012; As the passenger had not filed a declaration under section 77 of the Customs Act, 1962 and hence the order allowing re-export is not in order; The Commissioner (Appeals) has not only reduced the redemption fine and penalty but allowed re-export; The second order no. 404/2015



dated 24.08.2015 filed on of the commissioner (Appeal) dismissing the Appeal as infructious on the grounds of merger is also decided without going into the merits of the case and therefore not sustainable. the order of the Appellate authority makes smuggling an attractive proposition.

5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of 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 05.07.2018. Nobody from the department attended the personal hearing. The Respondent through his advocate Shri Palani Kumar attended the hearing and reiterated the observations of the Appellate authority and in his written reply interalia submitted that;

6.1 The respondent was all along at the red channel at the arrival hall of the airport; The ownership of the gold was not disputed and there was no ingenious concealment; There are no specific allegations that he tried to cross the green channel; There are no previous offences registered against him; The Original adjudicating authority has rightly exercised the option available under section 125 of the Customs Act,1962; The departments appeal was dismissed by the Commissioner (Appeals); The gold has already been claimed after payment of redemption fine and penalty and re-exported; In the present case the respondent had declared the gold but he was mislead and directed to write NIL in the declaration card in complete non abeyance of the CBEC circular 09/2001 which gives directions to the officers to verify details and ensure baggage declarations are filled up in full.

6.2 The Respondent cited decisions in favor of their case and prayed for setting aside the Revision Application and uphold the order of the Appellate authority or such an order as deemed fit.

7. The Government has gone through the case records it is observed that the respondent did not cross the green channel and was intercepted before he even attempted the same. The respondent was all along at the red channel. The ownership of the gold is not disputed. The respondent is not a habitual offender and there are no previous offences registered against him. The confiscated gold was wrapped in a pair of jeans and was recovered from his checked in baggage and there is no allegation of indigenous concealment. Absolute confiscation merely because of non declaration is a harsh option in such circumstances, and unjustifiable. The original authority has rightly allowed



redemption of the confiscated gold for re-export on payment of redemption fine. 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 original adjudicating authority vide his order 44/27.04.2015 and Appellate authority vide his order 333/2015 dated 26.06.2014 has also rightly extended the option of redemption of the gold for re-export on payment of redemption fine and penalty. The Commissioner (Appeals) vide his order in Appeal No. 404/2015 dated 24.08.2015 has also rightly held the Appeal of the Applicants as infructuous on the doctrine of merger, as orders on the same issue has already been issued earlier.

8. In conclusion, the Government therefore finds no reason to interfere with the Orders-in-Appeal. The Appellate orders 333/2015 dated 26.06.2014 & 404/2015 dated 24.08.2015 by the Commissioner of Customs (Appeals -I), Chennai are upheld as legal and proper.

9. Revision application is accordingly dismissed.

11. So, ordered.

(Signature)
28.11

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

683-684
ORDER No. A /2018-CUS (SZ) /ASRA/ Mumbai

DATED 02.08.2018

To,

1. The Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport,
Terminal -2, Mumbai.
2. Shri Vishal Chand Jain
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai - 600 001.

ATTESTED

(Signature)
12/10/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

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

