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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. 373/17/B/16-RA / 17/19

Date of Issue 12.10.2018.

ORDER NO. 618/2018-CUS (SZ)/ASRA/MUMBAI DATED 30.08.2018 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 : Shri Ismail Sharief

Respondent: Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 631/2015 dated 30.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Ismail Sharief (herein after referred to as the Applicant) against the order in appeal No. 631/2015 dated 30.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 09.10.2014. Examination of his baggage and person resulted in the recovery of one gold bar weighing 116.6 gms valued at Rs. 3,18,551/- ( Rupees Three Lakh Eighteen thousand Five hundred and Fifty one ).

3. The Original Adjudicating Authority vide Order-In-Original No. 1270/2014 dated 09.10.2014 ordered absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 40,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 631/2015 dated 30.09.2015 set aside the order in original ordered redemption of the gold on payment of redemption fine of Rs. 75,000/- and reduced the penalty to Rs. 30,000/-.

5. The applicant has filed this Revision Application interalia on the following grounds that;

5.1 The order of the appellate authority is unjust, unfair unreasonable biased and arbitrary and devoid of merits and unsustainable; The Applicant had purchased the gold for his personal use; The applicant did not opt for the green channel and also did not conceal the gold he had clearly mentioned "YES" in the questionnaire " Are you bringing gold bullion" and hence made a true and correct declaration of the gold; Gold is not a prohibited item and goods should have been allowed for re-export; Such a small quantity of gold cannot be for commercial purposes; and thus there was no intention for evading duty; There are a number of cases where gold has been released on payment on customs duty; Various appellate forums have repeatedly iterated that gold cannot be



confiscated absolutely and an option for redemption has to be extended to the passenger; The Applicant has strong grounds for considering redemption of the gold and pleaded that the Revisionary authority to allow the Appeal.

5.2 The Applicant submitted case laws in favor of his case and prayed for taking this memorandum of Appeal on record, allow re-export and pass such order as may be fit and proper in the facts and circumstances of the case.

6. A personal hearing in the case was scheduled to be held on 09.08.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and pleaded for setting aside the order in appeal on reduced redemption fine and penalty.

7. The Government has gone through the case records. The gold was not properly declared under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was carried by the Applicant and it was not indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. 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 on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant.

9. 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. In view of the above facts, the Government is of the opinion that more a lenient view can be taken in the matter. The Applicant has pleaded for re-export of the gold and reduction of redemption fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

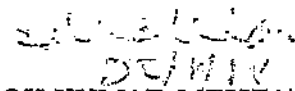
10. The impugned gold is allowed for re-export, the redemption fine of Rs. 75,000/- (Rupees Seventy Five thousand) imposed on impugned gold weighing



116.6 gms valued at Rs. 3,18,551/- ( Rupees Three Lakh Eighteen thousand Five hundred and Fifty one ) is reduced to Rs.1,20,000/- ( Rupees One lakh twenty thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from 30,000/- ( Rupees Twenty thousand ) to Rs. 24,000/- ( Rupees Twenty Four thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

10. So ordered.

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

ORDER No. 698/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.06.2018

To,

Shri Ismail Sharief  
 c/o M/s B. K. Associates  
 "Time Tower", Room No. 5, II Floor,  
 169/84, Gengu Reddy Road,  
 Egmore, Chennai- 600 008.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs & Central Excise (Appeals), Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

**ATTESTED**

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



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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. 380/09/B/15-RA / 300<sup>th</sup>

Date of Issue 28.11.2018

ORDER NO. 768/2018-CUS (S Z) / ASRA / MUMBAI/ DATED 28.09.2018 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 (Airport) Chennai.

Respondent : Shri Rahamatullah Syed Abdul Kader

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 139 & 140/2014 dated 18.12.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs, Chennai-I (Airport) Chennai, (herein referred to as Applicant) against the Order in Appeal C. Cus No. 139 & 140/2014 dated 18.12.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. On 11.08.2012 the respondents arrived at the Chennai Airport from Singapore. Examination of the baggage of Shri Rahamatullah Syed Abdul Kader resulted in the recovery of electronic goods ie high end professional cameras and Camcorders totally valued at Rs.9,78,000/- ( Rupees Nine lakhs Seventy eight thousand). Examination of the baggage of Shri Sayerathar Noor Mohammed Anwar Ali resulted in the recovery of electronic goods ie 27 high end mobile phones and a Sony LED TV totally valued at Rs.9,55,000/- ( Rupees Nine lakhs Fifty five thousand).

3. After due process of the law vide Order-In-Original No. 374/06.05.2014 the Original Adjudicating Authority ordered absolute confiscation of the goods of both the respondents and imposed a penalty of Rs. 1,00,000/- under Section 112 (a) of the Customs Act,1962 on each of the Respondent.

4. Aggrieved by the said order, the respondents filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 139 & 140/2014 dated 18.12.2014 allowed the redemption of the goods for re-export on payment of a redemption fine of Rs. 3,00,000/- but made no changes in the penalty imposed and allowed the appeal of the respondent.

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

5.1 Section 125 of the Customs Act,1962 gives the option to pay fine in lieu of confiscation but does not empower the adjudicating authority to allow re-export; the original adjudicating authority had found that under Section 125 of the Customs Act,1962 the option for redemption in lieu of confiscation is not mandatory; In this case the respondents had attempted to smuggle high end electronics by way of non-declaration and brought the goods for somebody else for monetary consideration; Even when the above grounds were stated by the



adjudicating authority while upholding absolute confiscation the Appellate authority has allowed re-export; The facility for re-export is allowed under Section 80 of the Customs Act, 1962 only when a true declaration is made by the passengers; The order of the Appellate authority has the effect of making smuggling an attractive proposition since even when caught by the Customs the passenger retains the benefit of redeeming the goods by way of re-export which works against deterrence.

5.2 The Revision Applicants cited case laws in support of their case and prayed that the order of the Appellate authority be set aside and the order of the Lower adjudication authority be restored or such an order as deemed fit.

6. In view of the above, the Respondent and his Advocate 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 scheduled held on 19.07.2018, 20.08.2018 and 10.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided ex parte on merits.

7. The Government has gone through the case records it is observed that the goods were not declared by the Respondent as required under section 77 of the Customs Act, 1962 and therefore, confiscation of the goods is justified. However the goods were not indigenously concealed. The impugned goods are not prohibited or restricted. There is force in the Appellate authorities contention that the respondents were intercepted by the officers at the arrival hall before they had the opportunity to declare the goods. There is no allegation of concealment. Absolute confiscation in such a case is very harsh and unjustified. 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. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the re-export of the gold on payment of the gold on redemption fine and penalty. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. The Respondents had brought the goods and though it was not concealed ingeniously, they both did not declare it as required under section 77 of the Customs Act, 1962 and therefore the redemption fine cannot be as low as ordered in the order in Appeal. Government is of the opinion that the impugned Order in Appeal is therefore liable to be modified.



8. The impugned Order in Appeal is modified as below. The Government allows redemption of the goods brought by the respondents for re-export. The redemption fine imposed on the respondents is increased from Rs. 3,00,000/- ( Rupees Three lakhs ) to Rs. 4,00,000/- ( Rupees Four lakhs) under section 125 of the Customs Act, 1962. The penalty of Rs. 1,00,000/- ( Rupees One lakh ) imposed on the Respondent under section 112(a) of the Customs Act, 1962 is appropriate.

9. Revision application is partly allowed on above terms.

10. So, ordered.

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

ORDER No. 768/2018-CUS (SZ) /ASRA/mumbai

DATED 28-09-2018

To,

1. The Commissioner of Customs, ( Airport) Chennai,  
New Custom House,  
Chennai-600 001.
2. Shri Rahamatullah Syed Abdul Kader  
C/o Shri S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High Court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

Copy to:

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

**ATTESTED**

**B. LOKANATHA REDDY**  
Deputy Commissioner (R.A.)

