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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. 380/26/B/15-RA/2018

Date of Issue 27/11/2018

ORDER NO. 708/2018-CUS (S Z) / ASRA / MUMBAI/ DATED 12.09.2018 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 : Smt. Shaikh Mastani Bi

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 332/2015 dated 24.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Commissioner of Customs (Airport) Chennai, (herein referred to as Applicant) against the Order in Appeal C. Cus No. I No. 332/2015 dated 24.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. On 28.10.2013 the respondent arrived at the Chennai Airport. Examination of her baggage resulted in the recovery of assorted gold jewelry and gold bits totally weighing 1330 gms valued at Rs. 34,65,175/- (Rupees Thirty four lakhs Sixty five thousand One hundred and Seventy Five). The gold ornaments were worn by the respondent and the gold bits were carried on her person.

3. After due process of the law vide Order-In-Original No. 16/18.04.2015 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 same for re-export on payment of Rs. 17,25,000/- and imposed penalty of Rs. 3,25,000/- under Section 112 (a) of the Customs Act,1962 on the Respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 332/2015 dated 24.06.2015 reduced the redemption fine to Rs. 7,00,000/- and also reduced the penalty to Rs. 1,50,000/- 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 The Order of the Commissioner (Appeals) order granting redemption is neither legal nor proper as the passenger had tried to smuggle the gold by way of concealment knowing well that she was not eligible for bringing gold; Further the passenger has admitted that she was not the owner of the gold; She did not have any Indian or foreign currency to pay duty; Eligibility to import gold is covered under notification No. 12/2012 -Cus dated 17.03.2012; The passenger does not fulfill all the conditions for concessional rate of duty; was ineligible to import the gold at concessional rate as she had not fulfilled the conditions stipulated; Section 80 of the Customs, Act,1962 allows re-export only when a true declaration is made by the passenger; The re-export ordered by the Commissioner (Appeals) is also not in order as the Passenger had not declared the gold as required under section 77 of the Customs Act,1962; The order of the

Appellate authority thus makes smuggling an attractive proposition since even when caught the passenger retains the benefit of redeeming the offending goods 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 or any such order as the Revisionary authority deems 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 24.07.2018, 20.08.2018 and 10.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits.

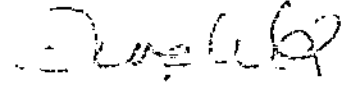
7. The Government has gone through the case records it is observed that the impugned gold recovered was worn by the respondents, but it was not declared by the Respondent and therefore the confiscation of the gold is justified. However, the impugned gold was not indigenously concealed. Import of gold is restricted not prohibited. The absolute confiscation in such cases appears to be a harsh option and not justified. 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 section 125 of the Customs Act, 1962 does not differentiate between an owner and a carrier. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Government also notes that the Appellate authority, noting that the respondent is not a frequent traveler and the Respondent does not have any previous offence registered against her, has therefore allowed the re-export of the gold. 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 Respondent had brought the gold and though it was not concealed ingeniously, she did not declare it and therefore the redemption fine and penalties 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 gold, weighing 1330 gms valued at Rs. 34,65,175/- (Rupees Thirty four lakhs Sixty five thousand One hundred and Seventy Five) for re-export. The redemption fine imposed is increased from Rs. 7,00,000/- (Rupees Seven lakhs) to Rs. 10,00,000/- (Rupees Ten lakhs) under section 125 of the Customs Act, 1962.

The penalty imposed on the Respondent is also increased from Rs. 1,50,000/- (Rupees One lakh Fifty thousand) to Rs.2,00,000/- (Rupees Two lakhs) under section 112(a) of the Customs Act,1962.

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. ⁷⁰⁸/2018-CUS (SZ) /ASRA/MUMBAI

DATED 12.09.2018

To,

1. The Commissioner of Customs, (Airport) Chennai,
New Custom House,
Chennai-600 001.

2. Smt. Shaikh Mastani Bi
W/o Shri Sheik Kader Yali
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai 600 001.

Copy to:

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