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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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F.No. 380/03/B/2015-RA | 2014

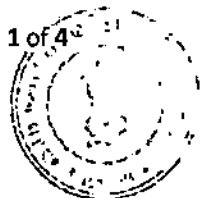
Date of Issue 27.11.2018

ORDER NO. 761/2018-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 Khuthbuddeen

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 79/2014 dated 20.11.2014 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. 79/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. On 18.07.2014 the respondent arrived at the Chennai Airport. Examination of his hand baggage resulted in the recovery of one gold bar weighing 116.5 gms valued at Rs. 2,97,570/- (Rupees Two lakhs Ninety Seven thousand Five hundred and Seventy). The gold bars were recovered from the pockets of the pants worn by the Respondent.

3. After due process of the law vide Order-In-Original No. 883/2014 Batch A dated 18.07.2014 the Original Adjudicating Authority ordered absolute confiscation of the goods under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 30,000/- 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. 79/2014 dated 15.12.2014 allowed the redemption of the gold on payment of applicable duty and a redemption fine of Rs. 30,000/- 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 The Order of the original adjudicating authority had reasoned that the redemption under section 125 in lieu of confiscation not mandatory as the Respondent had attempted to smuggle the gold by way of ingenious concealment; He was not an eligible passenger and had a culpable mind to smuggle the gold into India; The respondent has contravened the section 77 of the Customs Act, 1962, The Appellate authority without considering the same has allowed redemption of the gold; 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; Even though the grounds were stated by the adjudicating authority while upholding absolute confiscation the Appellate authority has allowed release of the gold; The Appellate authority wrongly allowing clearance of the gold is not acceptable as the passenger had intentionally not declared the gold;

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 *exparte* on merits.

7. The Government has gone through the case records it is observed that the gold bar were recovered from the respondents pant pockets and it was not declared by the Respondent and therefore, confiscation of the gold is justified. However the gold was not indigenously concealed. Import of gold is restricted not prohibited and the ownership of the gold is not disputed. Absolute confiscation in the 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 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 Respondent had brought the gold bars and though it was not concealed ingeniously, he 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.

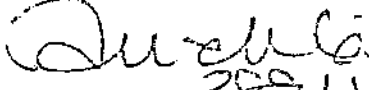


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8. The impugned Order in Appeal is modified as below. The Government allows redemption of the gold, weighing 116.5 gms valued at Rs. 2,97,570/- (Rupees Two lakhs Ninety Seven thousand Five hundred and Seventy) The redemption fine imposed is increased from Rs. 30,000/-/- (Rupees Thirty thousand) to Rs. 1,16,000/- (Rupees One lakh Sixteen thousand) under section 125 of the Customs Act, 1962. The penalty of Rs. 30,000/- (Rupees Thirty thousand) 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. 761/2018-CUS (S Z) /ASRA/MUMBAI

DATED 28.09.2018

To,

1. The Commissioner of Customs, (Airport) Chennai,
New Custom House,
Chennai-600 001.
2. Shri Khuthbuddeen
S/o Jammallamadugu Mahaboobsahi,
H. No. 21-62, Rajaji Road,
Porraddatur, Kadappa Dist.,
Andhra Pradesh 516 360.

ATTESTED


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

Copy to:

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

