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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. 380/87/B/14-RA / 2001

Date of Issue 26.11.2018

ORDER NO. ⁷⁶⁴/2018-CUS (SZ) / 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 C. Ex, Customs & Service Tax, Calicut.

Respondent : Shri Varankodan Janeeshmon

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CAL-EXCUS-000-APP-015-14-15 dated 16.04.2014 passed by the Commissioner of C. Ex, Customs & Service Tax (Appeals), Cochin.



ORDER

This revision application has been filed by Commissioner of C. Ex, Customs & Service Tax, Calicut, (herein referred to as Applicant) against the Order in Appeal No CAL-EXCUS-000-APP-015-14-15 dated 16.04.2014 passed by the Commissioner of C. Ex, Customs & Service Tax (Appeals), Cochin.

2. On 25.10.2012 the respondent arrived at the Calicut Airport. Examination of his baggage resulted in the recovery of 6 pieces of gold coins totally weighing 48 gms valued at Rs. 1,50,912/- (Rupees One lakh Fifty thousand Nine hundred and twelve). The gold coins were recovered from the handbag.

3. After due process of the law vide Order-In-Original No. 61/2012 dated 25.10.2012 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 on payment of Rs. 35,000/- as redemption fine and imposed penalty of Rs. 10,000/- 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 CAL-EXCUS-000-APP-015-14-15 dated 16.04.2014 observed that the redemption fine, penalty and customs duty was high and reduced the redemption fine to Rs. 14,000/- and also reduced the penalty to Rs. 5,000/- 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) is not correct; The amount of redemption fine was too low and the Respondent had paid duty at the rate of 10% when he was not eligible to import gold; No findings have been given on the grounds of Appeal filed by the department; The proviso 1 to section 125 of the Customs Act, 1962 has provided a fair opportunity for redemption on payment of a fine not exceeding the market value of the goods, However it does not mean that



a fair balance by way of disposal should not be achieved to the department; Considering the value of the goods and the gravity of offence the reduction of fine and penalty would not result in arresting smuggling activities; Therefore the reduction of fine and penalty is not proper and requires revision.

5.2 The Revision Applicants prayed that taking into consideration the above facts, whether the Appellate order was legally correct and proper and prayed for 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 17.07.2018, 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 6 gold coins were not declared by the Respondent. Therefore the confiscation of the gold is justified. As the gold was not indigenously concealed. Import of gold is restricted not prohibited and the ownership of the gold is not disputed. The Government therefore is inclined to agree with the Order-in-Appeal and the Original adjudicating Order 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 coins and though it was not concealed ingeniously, he 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 redemption fine and penalties imposed by the Original adjudication authority to be appropriate and therefore the impugned Order in Appeal therefore needs to be set aside and the Original

adjudication order is liable to be upheld.

8. The impugned Order in Appeal CAL-EXCUS-000-APP-015-14-15 dated 16.04.2014 passed by the Commissioner of Customs & Service



Tax (Appeals), Cochin is therefore set aside. Order-In-Original issued by the Original Adjudicating Authority is upheld as proper and legal.

9. Revision application is dismissed.

10. So, ordered.

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

ORDER No. 764/2018-CUS (S Z) /ASRA/MUMBAI.

DATED 28.09.2018

To,

1. The C. Ex, Customs & Service Tax, Calicut,
C. R. Building,
Mananchira,
Calicut - 673 001.
Kerala.
2. Shri Varankodan Janeeshmon
Varankodan House,
Pullengode P. O.
Mallapuram 676 525.

Copy to:

3. The Commissioner of C. Ex, Customs & Service Tax (Appeals), Cochin.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

ATTESTED

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26/11/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

