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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. 380/30/B/15-RA

Date of Issue

22/11/2018

ORDER NO. 767/2018-CUS (S Z) / ASRA / MUMBAI / DATED 22.09.2018 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 Sheikh Dawood Sikkandhar

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 197/2015 dated 24.04.2015 passed by the Commissioner of Customs (Appeals), 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. 197/2015 dated 24.04.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. On 20.02.2015 the respondent arrived at the Chennai Airport. Examination of his baggage resulted in the recovery of gold bits weighing 49 gms valued at Rs. 1,21,484/- (Rupees One lakh Twenty one thousand four hundred and Eighty four). The gold bits were concealed in his undergarments. Apart from the above the Respondent had brought 1400 Esse Cigarettes valued at Rs. 4,900/-, 2800 Davidoff cigarettes valued at Rs. 9,800/-, 6 Blackberry Mobiles valued at 60,000/-, and 18 Burkhas valued at Rs. 9,000/-.

3. After due process of the law vide Order-In-Original No. 165/2015 Batch C dated 20.02.2015 the Original Adjudicating Authority ordered confiscation of the 6 Blackberry Mobiles and 18 Burkhas valued, but allowed redemption of these goods on payment of Rs. 35,000/-. The gold and cigarettes were ordered for absolute confiscation of the gold and cigarettes under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 21,000/- 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. 197/2015 dated 24.04.2015 allowed the goods, absolutely confiscated for re-export on payment of redemption fine of Rs. 30,000/- and allowed the appeal of the respondent.

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

5.1 The Order of the Commissioner (Appeals) order granting concession of re-export is neither legal nor proper as the passenger had tried to smuggle the gold by way of concealment knowing well that he was not eligible for bringing gold; The passenger was ineligible to import the gold at concessional rate as he had not fulfilled the conditions stipulated; 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. The Revision Applicants 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 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 exparte on merits.

7. The Government has gone through the case records it is observed that the gold bits recovered from the respondents undergarments and therefore the confiscation of the gold is justified. Import of gold is restricted not prohibited and the ownership of the gold is not disputed. Government observes that though the gold was concealed it cannot be termed as indigenously concealed. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up. Thus, mere non-submission of the declaration cannot be held against the Applicant. 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. The absolute confiscation in such cases appears to be a harsh option and not justified. 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 does not have any previous offence registered against him has allowed the re-export of the gold and cigarettes. 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 chain 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 inappropriate and therefore the impugned Order in Appeal is liable to be accordingly modified.

8. The impugned Order in Appeal is set aside. The Government allows redemption of the gold, weighing 49 gms and the cigarettes totally valued at Rs. 1,36,184/- (Rupees One lakh Thirty six thousand One hundred and Eighty four) for re-export. The redemption fine imposed is increased from Rs. 30,000/- (Rupees Thirty thousand) to Rs. 40,000/- (Rupees Forty thousand) under section 125 of the

Customs Act, 1962. The Government also reduces that the penalty of Rs. 21,000/- imposed on the Respondent under section 112(a) of the Customs Act, 1962 to Rs. 8,000/- (Rupees Eight thousand).

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. 767/2018-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 Sheikh Dawood Sikkandhar
S/o Sikkandhar,
No. 10, C Kelakadu, Madkkur P.O., Thanjavur District,
Tamil Nadu.

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.