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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. 380/09/B/15-RA / 2076

Date of Issue 20.11.2018

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 inter alia 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 exparte 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 23-09-2018

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, 2nd 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.)

