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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. 380/29/B/15-RA/20⁶⁵

Date of Issue 28/11/2018

ORDER NO. ⁷⁷⁸/2018-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 Customs (Airport) Chennai.

Respondent : Smt. Seyed Mohamed Salihu Shamu Nafeela

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus-
I No. 199/2015 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. I No. 199/2015 dated 24.04.2015 passed by the Commissioner of Customs (Appeals), 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 764 gms valued at Rs. 21,29,146/- (Rupees Twenty one lakhs Twenty nine thousand One hundred and Forty six). The gold ornaments were worn by the respondent.

3. After due process of the law vide Order-In-Original No. 147/2014 dated 24.02.2014, the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 2,00,000/- 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. I No. 199/2015 dated 24.04.2015 allowed the gold for re-export on payment of redemption fine of Rs. 6,00,000/- and also reduced the penalty to Rs. 1,00,000/- 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;

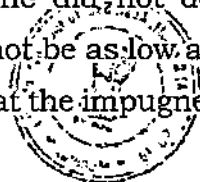
5.1 The Order of the Commissioner (Appeals) order granting concession of re-export is neither legal nor proper as the passenger had tried to smuggle the gold by way of concealment knowing well that she was not eligible for bringing gold; The passenger was ineligible to import the gold at concessional 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. 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 *ex parte* 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. The impugned gold was not indigenously concealed. Import of gold is restricted not prohibited and the ownership of the gold is not disputed. 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 ownership of the gold is not disputed, she 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 chain 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.



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8. The impugned Order in Appeal is set aside. The Government allows redemption of the gold, weighing 764 gms valued at Rs. 21,29,146/- (Rupees Twenty one lakhs Twenty nine thousand One hundred and Forty six) for re-export. The redemption fine imposed is increased from Rs. 6,00,000/- (Rupees Six lakhs) to Rs. 7,50,000/- (Rupees Seven lakhs Fifty thousand) under section 125 of the Customs Act, 1962. The penalty imposed on the Respondent is also increased from Rs. 1,00,000/- (Rupees One lakh) to Rs.1,50,000/- (Rupees One lakh Fifty thousand) under section 112(a) of the Customs Act,1962.

9. Revision application is partly allowed on above terms.

10. So, ordered.

(Handwritten Signature)
28/9/18

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

ORDER No. 778/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.09.2018

To,

1. The Commissioner of Customs, (Airport) Chennai,
New Custom House,
Chennai-600 001.
2. Smt. Seyed Mohamed Salihu Shamu Nafeela
W/o Shri Sheik Abdul Kader
Old No. 89/15, New No. 312/9,
East Street, Keelakarai Post,
Ramanathapuram District,
Tamilnadu.

Copy to:

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

