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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. 380/59/B/15-RA / 2018

Date of Issue 28.11.2018

ORDER NO. 784/2018-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 Rafeeq Ahmed Mustafa

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 365/2015 dated 30.06.2015 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. 365/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals), Chennai.

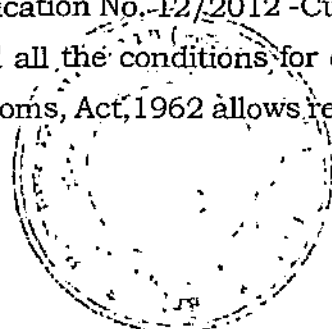
2. On 29.09.2014 the respondent arrived at the Chennai Airport. Examination of his hand baggage resulted in the recovery of four gold bars weighing 400 gms valued at Rs. 9,88,000/- (Rupees Nine lakhs Eighty eight thousand). The gold bars were recovered from his pant pockets.

3. After due process of the law vide Order-In-Original No. 1241/2014 -AIR dated 28.03.2015 the Original Adjudicating Authority ordered confiscation of the goods under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption of the gold for re-export on payment of Rs. 3,50,000/- and imposed penalty of Rs. 90,000/- 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. 365/2015 dated 30.06.2015 reduced the redemption fine to Rs.2,00,000/- 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 original adjudicating authority and the order of the Commissioner (Appeals) are both neither legal nor proper as the passenger had concealed the gold and had not declared it; The respondent has contravened the section 77 and 11 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; Section 80 of the Customs, Act, 1962 allows re-export only when a true declaration is made



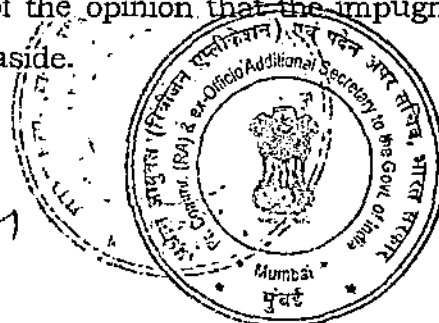
by the passenger; The re-export ordered by the Commissioner (Appeals) is not in order as the Passenger had not declared the gold as required under section 77 of the Customs Act, 1962;

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 upheld 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 25.07.2018, 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 bars were recovered from the respondents pant pockets and it was not declared by the Respondent and therefore the 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. 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

(A) fine and penalty. The Appellate authority has also rightly agreed to the contentions of the original adjudication authority that the ownership of the gold is not a condition for redemption. 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 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 set aside.



8. The impugned Order in Appeal is set aside. The Government allows redemption of the gold, weighing 400 gms valued at Rs. 9,88,000/- (Rupees Nine lakhs Eighty eight thousand) for re-export. The redemption fine imposed is increased from Rs. 2,00,000/-/- (Rupees Two lakhs) to Rs. 4,00,000/- (Rupees Four lakhs) under section 125 of the Customs Act, 1962. The penalty imposed on the Respondent is also increased from Rs. 90,000/- (Rupees Ninety thousand) to Rs. 1,00,000/- (Rupees One lakh) under section 112(a) of the Customs Act,1962.

9. Revision application is partly allowed on above terms.

10. So, ordered.

(Signature)
28/9/18

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

ORDER No. ⁷⁸⁴/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.09.2018

To,

1. The Commissioner of Customs, (Airport) Chennai,
New Custom House,
Chennai-600 001.
2. Shri Rafeeq Ahmed Mustafa
S/o Rafeeq Ahmed,
Butanogudi,
1st Cross,
Bhadravathi,
Shimoga,
Karnataka 577 301.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

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

