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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. 380/127/B/16-RA/3383 Date of Issue 28.07.2020

ORDER NO. 89/2020-CUS (SZ)/ASRA/MUMBAI DATED 24.06.2020 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, Chennai.

Respondent : Shri Hakkullah Abdul Kather

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 129/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

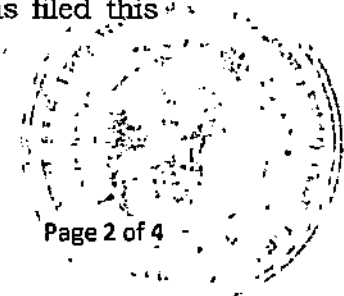
This revision application has been filed by the Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order C. CUS-I No. 129/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Hakkullah Abdul Katherat the Anna International Airport, Chennai on 02.02.2016 at the green channel. He was found carrying one teachers whiskey 5 (five) ltrs bottle and onegold chain weighing 45 grams in his underwear totally valued at Rs. 1,15,174/- (Rupees One lac Fifteen thousand One hundredand Seventy four).

3. After due process of the law vide Order-In-Original No. 135/2016 Batch Ddated 02.02.2016the Original Adjudicating Authority ordered absolute confiscation of the gold and liquor under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 12,000/- (Rupees Twelve thousand) under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the respondent filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order C. CUS-I No. 129/2016 dated 29.02.2016allowed the gold to be redeemed for home consumption on payment of Rs. 30,000/- (Rupees Thirty thousand)as redemption fine, upheld the penalty imposed and also upheld the absolute confiscation of the liquor and partially allowed the appeal of the Respondent.

Aggrieved with the above order the Applicant department has filed this application interalia on the grounds that;



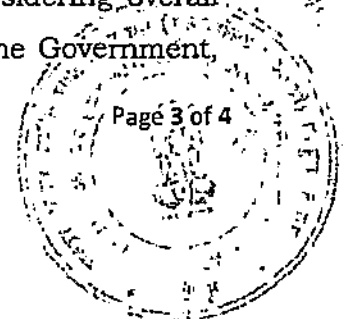
5.1 The Order of the Commissioner (Appeals) is neither legal nor proper; The Applicant had stayed abroad for less than three days; He did not declare the gold as required under section 77 of the Customs Act 1962; He had attempted to smuggle the gold by way of non declaration and thus had a culpable mind to smuggle the goods into India; He has not fulfilled any of the conditions required notification No. 12/2012 and Baggage Rules 1998 and therefore was ineligible to import gold; Hence granting redemption of the gold by the Appellate Authority was not proper and is not sustainable under the law; The Order of The Appellate Authority has the effect of making smuggling an attractive proposition since if caught the passenger retains the benefit of redeeming the offending goods which works against deterrence.

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the impugned Order may be forthwith stayed.

6. In view of the above, personal hearings in the case were scheduled on 21.11.2019. Shri Palanikumar, Advocate attended the hearing on behalf of the Respondent. And presented a written submission on behalf of his client. Nobody attended the hearing on behalf of the Applicant department.

7. The Government has gone through the case records. It is observed that the respondent did not declare the gold as required under section 77 of the Customs, Act, 1962 and had opted for the green channel. Therefore the confiscation of the gold is justified.

8. Gold is a restricted item and its import is not prohibited. There are no allegations that the gold was ingeniously concealed. Though the Respondent is a frequent traveller he does not have a long history of previous recorded offences. The quantity of the gold under import is small and part of the goods bought have been absolutely confiscated. Under the circumstances, considering other facts, it would be harsh to dispossess him of the gold. Further, there are a number of judgments wherein the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 requires it to be exercised. The ownership of the gold is not disputed and considering overall circumstances of the case in the wake of liberalized policy of the Government,



the Appellate order has set aside absolute confiscation. Further, the value of the gold as determined by the Applicant department is Rs. 1,11,424/- the redemption fine of Rs. 30,000/- the personal penalty of Rs. 12,000/- and the customs duty of 36% on the value of the gold would amount to almost 75% of the value of the gold. This is a deterrent enough discourage such activities in the future. The Appellate order is therefore liable to be upheld.

9. In view of the above facts, Government is of the opinion that the Appellate authority has rightly taken a fair view in the matter and allowed the gold on redemption fine and penalty. The Revision Application is therefore liable to be dismissed.

10. Revision application is accordingly dismissed.

11. So, ordered.

(SEEMA ARORA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 89/2020-CUS (SZ) /ASRA/MUMBAI.

DATED 24.06.2020

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Hakkullah Abdul Kather, S/o Abdul Kather. No. 8, VPN Street, Mannargudi, Thiruvarur, 614001, Tamilnadu.

Copy to:

1. Shri S. Palanikumar, Advocate, No. 10, Sunkurama Chetty Street, Opp High court, 2nd Floor, Chennai 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

ATTESTED

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

