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SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 380/71/B/16-RA

195

Date of Issue 29.11.2018

ORDER NO. 925/2018-CUS (SZ)/ASRA/MUMBAI DATED 31.10.2018 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, Tiruchirappalli.

Respondent : Shri R. Thangavel

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 02/2016-TRY (CUS) dated 07.01.2016 passed by the Commissioner of Customs (Appeals-II), Trichirappalli.

ORDER

This revision application has been filed by The Commissioner of Customs, Tiruchirappalli. (herein referred to as Applicant) against the order 02/2016 TRY (CUS) dated 07.01.2016 passed by the Commissioner of Customs (Appeals-II), Trichirappalli.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Thangavel a Sri Lankan citizen, at the Tiruchirappalli. International Airport on 12.07.2015 while passing through the green channel. Examination of his baggage and person resulted in recovery of two gold chains and gold bit totally weighing 142.8 grams valued at Rs. 3,50,481/- ( Rupees Three Lakhs Fifty Thousand Four hundred and eighty one ).

3. After due process of the law vide Order-In-Original No. 262/2015 dated 12.07.2015 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.35,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Tiruchirappalli, Commissioner (Appeals-II) vide his order No. 02/2016 TRY (CUS) dated 07.01.2016, allowed the gold to be redeemed on payment of Rs. 1,20,000/- as redemption fine and increased the penalty to Rs. 60,000/- and partially allowed the appeal of the Respondent.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 As the respondent had not declared the gold as required under section 77 of the Customs Act,1962, it is evident that his intention was to clear the gold without payment of duty; Under section 123 the when gold is seized from the person on reasonable belief that the same is smuggled the onus to prove that it is not smuggled lies with the said person; The respondent has admitted that he is not the owner of the gold and the same belongs to someone else and that he was carrying it for monetary consideration and therefore not bonafide baggage; As the prescribed conditions for the import of gold were not met it became prohibited goods;



The benefit of notification 12/2012 is available only to a bonafide passenger and to those who fulfill the conditions therein; The Commissioner ( Appeals has erred in holding that just because the respondent has stayed abroad for more than six months he is eligible for concessional rate of duty; Therefore the release of the gold by the Commissioner (Appeals) under section 125 of the Customs Act,1962 was not legal and proper.

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 24.08.2018. 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 respondent did not declare the gold and therefore confiscation of the gold is justified. The respondent however did not cross the green channel and was intercepted before he attempted the same. There is no allegation of indigenous concealment. There are no allegations of any previous offences. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant.

9. 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 in regard to goods that are not prohibited. The Government also note that the section 125 does not distinguish between and carrier and the owner of the gold; Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. Government also observes that the appellate order has imposed appropriate redemption fine of Rs.1,20,000/- as redemption fine on gold weighing 142.8 grams valued at Rs. 3,50,481/- ( Rupees Three Lakhs Fifty Thousand Four hundred and eighty one ) The penalty of Rs. 60,000/- ( Rupees Sixty thousand ) imposed under section 112 (a) of the Customs act,1962

is also appropriate. The Government therefore is not inclined to interfere in the order of the Commissioner (Appeals).

9. The impugned Order in Appeal No. 02/2016 TRY (CUS) dated 07.01.2016 passed by the Commissioner of Customs (Appeals-II), Trichirappalli is upheld as legal and proper.

10. Revision application is accordingly dismissed.

11. So, ordered.

*Ashok Kumar Mehta*  
31/XIV

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

ORDER No. <sup>925</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.10.2018

To,

1. The Commissioner of Customs,  
Custom House,  
Rajaji Salai,  
Tiruchirappalli.
2. Shri R. Thangavel  
Plot No. 5 Selvam Illam,  
Thanthai Periyar Nagar,  
2<sup>nd</sup> Street, Sekkalaikottai,  
Karaikudi Post.

Copy to:

1. The Commissioner of Customs (Appeals), Tiruchirappalli.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.