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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. 380/79/B/16-RA/31/97

Date of Issue 29.11.2018

ORDER NO. 927/2018-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 K. Venkatraman

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 28/2016 TRY (CUS) dated 10.02.2016 passed by the Commissioner of Customs (Appeals-II), Tiruchirappalli.

ORDER

This revision application has been filed by The Commissioner of Customs, Trichirappalli. (herein referred to as Applicant) against the order 28/2016 TRY (CUS) dated 10.02.2016 passed by the Commissioner of Customs (Appeals-II), Tiruchirappalli.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri K. Venkatraman, 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 totally weighing 79.8 grams valued at Rs. 1,95,857/- ( Rupees One Lakh Ninety five Thousand Eight hundred and fifty Seven).
3. After due process of the law vide Order-In-Original No. 259/2015 dated 10.07.2015 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.20,000/- 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) Trichirappalli, Commissioner (Appeals-II) vide his order No. 28/2016 TRY (CUS) dated 10.02.2016, allowed the gold to be redeemed on payment of Rs. 80,000/- as redemption fine along with the penalty of Rs. 20,000/- already imposed and partially allowed the appeal of the Respondent.
5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;
  - 5.1 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; Overriding the above reasons the release of the gold by the Commissioner (Appeals) under section 125 of the Customs Act,1962 was not legal and proper; 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; The discretion under section 125 is not an

absolute discretion and the discretion has not be exercised judiciously; The order of the original adjudicating authority is therefore proper and legal.

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 hearings in the case were scheduled on 24.08.2018, 04.10.2018 and 14.10.2018. 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. However, there are no allegations of the respondent trying to cross the green channel and therefore he was intercepted before he attempted the same. There is also no allegations of indigenous concealment. There are no previous offences registered against the Respondents. The gold is not in primary form. 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.

8. 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. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustified. Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Government also observes that the Commissioner (Appeals) has imposed appropriate redemption fine of Rs.80,000/- on gold weighing 79.8 grams valued at Rs. 1,95,857/- ( Rupees One Lakh Ninety five Thousand Eight hundred and Fifty Seven). Government observes that the facts of the case also justify the penalty of Rs. 20,000/- (Rupees Twenty thousand ) imposed under section 112(a) of the Customs Act,1962. The penalty imposed on


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

9. The impugned Order in Appeal No. 28/2016 TRY (CUS) dated 10.02.2016 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)  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. <sup>927</sup>/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 31.10.2018

To,

1. The Commissioner of Customs,  
Custom House,  
Rajaji Salai,  
Tiruchirappalli.
2. Shri K. Venkatraman s/o Kamalappa Thevar.  
No. 114/19-B, Manjavayal Road,  
Thenpuram Mudhali Kadu,  
Maravakkadu Post,  
Thanjavur - 614 704.

Copy to:

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