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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. 380/130/B/16-RA

2256

Date of Issue 03.12.2018

ORDER NO. 966/2018-CUS (SZ) / ASRA / MUMBAI DATED 28.11.2018 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 : The Commissioner of Customs, Visakhapatnam.

Respondent : Shri Senthil Kumar Ambalagan.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 10/2016-VCH dated 31.05.2016 passed by the Commissioner (Appeals), Customs & Central Excise, Visakhapatnam.



ORDER

This revision application has been filed by Commissioner of Customs, Visakhapatnam (herein referred to as Applicant) against the Order in Appeal No. 10/2016-VCH dated 31.05.2016 passed by the Commissioner (Appeals), Customs & Central Excise, Visakhapatnam.

2. Shri Senthil Kumar Ambalagan (herein referred to as "the respondent") was intercepted by the Customs Officers at Visakhapatnam Airport on his arrival by the Flight No. OD25 from Singapore on 04.08.2015. During the personal search of the respondent, the Customs Officers recovered four gold bars on person of the respondent. These four gold bars were totally weighing 400 gms and was appraised at Rs. 9,07,656/- (Rupees Nine Lakh Seven Thousand Six Hundred Fifty Six Only). The Customs officers seized the impugned gold bars under the reasonable belief that the same were smuggled into India and hence liable to confiscation under the provisions of the Customs Act.

3. After due process of the law vide Order-In-Original No. 83/2015 dated 04.08.2015 the Original Adjudicating Authority ordered absolute confiscation of four gold bars totally weighing 400 gms valued at Rs. 9,07,656/- under Section 111 (d), (l) & m of the Customs Act, 1962 and imposed penalty of Rs. 90,000/- under Section 112 (a) & (b). The adjudicating authority had also ordered confiscation of miscellaneous goods valued at Rs. 11,200/- under Section 111(d),(l) & (m) of the Customs Act, 1962 but allowed the respondent an option to pay fine of Rs. 1,000/- in lieu of confiscation of these goods.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals), Visakhapatnam. The Appellate Authority vide Order in Appeal No. 10/2016-VCH dated 31.05.2016 had allowed the redemption of four gold bars totally weighing 400 gms valued at Rs. 9,07,656/- on payment of fine of Rs. 1,00,000/- for re-export of the same and reduced the penalty under Section 112(a) of the Customs Act, 1962 to Rs. 50,000/-.



5. Aggrieved with the above order the applicant has filed this revision application on the following grounds :-

- 5.1 Shri Senthil Kumar Ambalagan accepted the guilt of carrying gold on person for others. This means he was a mere carrier and the property did not belong to him.
- 5.2 Section 77 of the Customs Act, 1962 requires every passenger to submit the Customs Declaration Form giving details of gold or other valuable goods.
- 5.3 The respondent was coming to India after period not less than six months of stay abroad.
- 5.4 the respondent brought the prohibited goods and hence can not be redeemed.

The department requested to set aside the impugned order in appeal.

6. A personal hearing in the case was fixed on 27.08.2018, 17.09.2018 & 26.09.2018. However, no representative from the applicant's side appear on any of the occasion so offered.

7. The Government has gone through the case records and it is seen that the respondent arrived at the Visakhapatnam Airport on 04.08.2015 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of four gold bars on person. The impugned four gold bars were totally weighing 400 gms valued at Rs. 9,07,656/- .

8. The Original Adjudicating Authority ordered absolute confiscation of 400 gms of gold valued at Rs. 9,07,656/- under Section 111 (d), (l) & (m) of the Customs Act, 1962 and imposed penalty of Rs. 90,000/- under Section 112 (a) & (b) on the Respondent. The Appellate Authority modified the order of the adjudicating authority and allowed the redemption of four gold bars totally weighing 400 gms valued at Rs. 9,07,656/- on payment of fine of Rs. 1,00,000/- in lieu of confiscation.



9. The Government notes that the impugned gold was recovered on person from the respondent. The respondent has attempted to clear four gold bars totally weighing 400 gms valued at Rs. 9,07,656/- with intent not to declare it to the Customs Officers and to clear them clandestinely without declaration and without payment of Customs duty. Filing true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger. In the instant case, the respondent, on his arrival at Airport, was asked by the Customs Officers as to whether he was carrying any gold / gold jewellery or crude gold in his baggage or on his person to which he replied in the negative. The act on the part of respondent clearly shows his intention to clear the impugned gold without payment of Customs Duty.

10. It is evident that the respondent has contravened the provisions of Customs Act, 1962. However, the Government finds that impugned gold was recovered on person from the respondent and was not concealed ingeniously. Further, the Government finds that the department did not produce details of cases filed against respondent in which he was involved in any offences and it was a hardcore attempt on his part to smuggle the goods into India. In view of the above facts, the Government is of the opinion that the Appellate Authority has rightly given option the respondent to redeem the impugned gold for re-export on payment of redemption fine. However, the Government holds that redemption fine imposed by the Appellate Authority is not commensurate with the value of impugned gold intended to be cleared without payment of appropriate duty and hence the same needs to be increased.

11. Taking into consideration the forgoing discussion, Government modifies the Order in Appeal No. 10/2016-VCH dated 31.05.2016 to the extent that the redemption fine imposed under Section 125 of Customs Act, 1962 is increased from Rs. 1,00,000/- to Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only).



12. The impugned Order in Appeal is modified as detailed above.
Revision application is allowed on above terms.

13. So, ordered.

(Handwritten Signature)
28/11/18

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

ORDER No. ⁹⁶⁶/2018-CUS (SZ) /ASRA/MUMBAI. DATED 28.11.2018

To,

1. The Commissioner of Customs, Visakhapatnam,
Customs House, Port Area,
Visakhapatnam- 530 035
2. Shri Senthil Kumar Ambalagan,
S/o Ambalagan,
5, Indira Gandhi Cross Street,
Venkateswara Nagar, Port Area,
Ambattur, Chennai- 600 053. Tamilnadu.

Copy to:

1. The Commissioner (Appeals), Customs, Central Excise & Service
Tax, Visakhapatnam, 4th Floor, Customs House, Port Area,
Visakhapatnam - 530 035.
2. Sr. P.S. to AS (RA), Mumbai.
- ✓ 3. Guard File.
4. Spare Copy.

ATTESTED

(Handwritten Signature)
3.12.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

