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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. 380/28/B/16-RA /2291 Date of Issue 05/12/2018

ORDER NO. 993 /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 : Commissioner of Customs (Airport) Trichy.

Respondent : Shri K. Kalimuthu

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 28/2015 TRY (CUS) dated 04.11.2015 passed by the Commissioner of Customs (Appeals-II), Trichy.

ORDER

This revision application has been filed by Commissioner of Customs Trichy , (herein referred to as Applicant) against the Order in Appeal No. 28/2015 TRY (CUS) dated 04.11.2015 passed by the Commissioner of Customs (Appeals-II), Trichy.

2. On 29.04.2015 the respondent was intercepted at the Trichy Airport and one gold bracelet weighing 82 grams valued at Rs. 2,00,282/- (Rupees Two lakhs Two hundred and Eighty two) was recovered from him. After due process of the law vide Order-In-Original No. 215/2015 dated 29.04.2015 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 on the Respondent.

3. Aggrieved by the said order, the respondent filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. 28/2015 TRY (CUS) dated 04.11.2015 allowed redemption of the gold on payment of Rs. 20,000/- as redemption fine. The penalty imposed was not interfered with.

4. Aggrieved with the above order the Applicants have filed this revision application, interalia on the grounds that;

4.1 The Order in Appeal is not legal and proper on the following grounds; The non-declaration on the part of the passenger itself constitutes primary evidence proving the intention of the passenger to evade duty; It was the responsibility of the passenger that the gold belonged to him and that he was an eligible passenger and should have offered to pay duty; The gold was required to be declared as per section 77 of the Customs, Act, 1962 and therefore cannot be treated as bonafide baggage; The passenger carried the gold on behalf of another person on commission basis; If the conditions for the import of gold are not complied with it has to be treated as prohibited goods; The order in Appeal findings that the respondent is an eligible passenger for concessional rate of duty, having stayed abroad for more than 6 months is incorrect; Gold is a notified commodity under section 123 of the Custom Act, 1962 and the onus to prove that the gold is not smuggled lies with the person from whom the gold has been recovered, the respondent has not discharged the responsibility cast on him and therefore the decision of the adjudicating authority not to release the

gold was legal and proper; Therefore the Commissioner (Appeals)has erred in not considering the plea of the department considering the facts and circumstances of the case.

5. 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 on 27.08.2018, 09.10.2018 and 16.10.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits.

6. The Government has gone through the case records, it is observed that the gold was not indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. There is no allegation that the Respondent has any past history of such misdemeanors. 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.

7. 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 view of the above facts, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. 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 gold though not concealed ingeniously, it was required to be declared as per section 77 of the Customs, Act, 1962 and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore needs to be modified.

8. The impugned Order in Appeal is set aside. The Government allows redemption of the golds, weighing 82 grams and valued at Rs. 2,00,282/- (Rupees Two lakhs Two hundred and Eighty two) for home consumption on payment of applicable customs duty. The redemption fine of Rs. 20,000/- (Rupees Twenty thousand) is increased to Rs.50,000/- (Rupees Fifty thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty of Rs.

20,000/- (Rupees Twenty thousand) imposed on the Respondent under section 112(a) of the Customs Act,1962. The same is upheld.

9. Revision application is partly allowed on above terms.

10. So, ordered.

25.11.18

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

ORDER No.993/2018-CUS (S Z) /ASRA/Mumbai DATED 28.11.2018

To,

1. Commissioner of Customs,(Airport) Trichy,
   Williams Road, Cantonment, Trichy.

2. Shri K Kalimuthu
   378, N.S.K. Nagar,
   Arumbakkam,
   Chennai,
   Tamil Nadu – 600 106.

Copy to:

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

ATTESTED

30/11/18

S.R. HIRULKAR
Assistant Commissioner (R.A.)

Pr. Commr. (RA) & ex-Officio Additional Secretary to the Govt of India
Mumbai