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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. 380/73/B/16-RA 1285 Date of Issue 05/12/2018

ORDER NO. 998/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 29.11.2018 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 : Smt. Kalaiarasi

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 04/2016 TRY (CUS) dated 06.01.2016 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. 04/2016 TRY (CUS) dated 06.01.2016 passed by the Commissioner of Customs (Appeals-II), Trichy.

2. On 29.07.2015 the respondent was intercepted at the Trichy Airport and one gold chain weighing 94.4 grams valued at Rs. 2,26,914/- (Rupees Two lakhs Twenty six thousand Nine hundred and Fourteen) was recovered from her. After due process of the law vide Order-In-Original No. 320/2015 dated 29.07.2015 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. 23,000/- 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. 04/2016 TRY (CUS) dated 06.01.2016 allowed redemption of the gold on payment of Rs. 80,000/- as redemption fine. The penalty imposed was also increased to Rs. 40,000/.

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 gold was required to be declared as per section 77 of the Customs, Act, 1962 and therefore as the Respondent had filed any declaration, there was no reason to examine further whether there was any concealment on behalf of the respondent; 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 illegal and proper; 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 should have offered to pay duty; Not having declared the gold it 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; 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 there is no allegation that the gold was indigenously concealed. The facts of the case reveal that the Respondent had not declared the gold as required under section 77 of the Customs, Act, 1962, and therefore the confiscation of the gold is justified.

7. However, the case of the Appellants is that the Respondent has not been able to prove legal purchase of the gold, that the respondent had resided abroad for only three days and that he did not have the foreign currency to pay custom duty. However, import of gold is restricted not prohibited and the ownership of the gold is not disputed. There is no allegation that the Respondent has any past history of such misdemeanors.

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 and release the goods to the owner, and where such owner is not known, the person from whose possession or custody such goods have been seized. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is a very harsh option and cannot be justified and therefore prompts the

Government to take a lenient view in the matter. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold weighing 94.4 grams valued at Rs. 2,26,914/- (Rupees Two lakhs Twenty six thousand Nine hundred and Fourteen) on redemption fine and penalty. Government also observes that the redemption fine and penalty of Rs. Rs. 80,000/- (Rupees Eighty thousand) imposed under section 125 of the Customs Act, 1962 and the penalty of Rs. 40,000/- (Rupees Forty thousand) imposed on the Respondent under section 112(a) of the Customs Act,1962 to be appropriate. The Revision Application is therefore liable to be dismissed.

9. Revision application is accordingly dismissed.

10. So, ordered.

29/11/18

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

ORDER No.998/2018-CUS (SZ) /ASRA/Mumbai DATED 29.11.2018

To,

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

2. Smt. Kalaiarasi
   W/o Shri Balasubramanian
   D. No. 31/A18, Moorthian Kadu,
   MarainayanallurP.O.,
   Vedaran Tk.
   Nagapattinam – 614 810.

ATTESTED

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

Copy to:

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