

**SPEED POST**



F. No. 380/37/B/SZ/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue. 26/4/23

Order No. 155/23-Cus dated 26-04-2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129DD of the Customs Act 1962 against the Order-in-Appeal No. C. Cus.I 65/2019 dated 05.03.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Pr. Commissioner of Customs, Chennai-I (Airport), Chennai.

Respondent : Smt. Samsun Hinaya, Nigambu, Sri Lanka.

**ORDER**

Revision Application No. 380/37/B/SZ/2019-RA dated 06.05.2019 has been filed by the Pr. Commissioner of Customs, Chennai-I, Chennai (hereinafter referred to as the Applicant department) against the Order-in-Appeal. C. Cus.I No. 65/2019 dated 05.03.2019, passed by Commissioner of Custom (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 25/2018 dated 29.09.2018, passed by the Deputy Commissioner of Customs (Prev. Refunds), New Customs House, Meenambakkam, Chennai to the extent of deduction of Customs duty from the sale proceeds to be returned to Smt. Samsun Hinaya, Nigambu, Sri Lanka (hereinafter referred to as the Respondent).

2. Brief facts of the case are that, on 10.06.2011, the Respondent herein was intercepted at the Chennai Airport and 05 nos. 24 carat gold bangles, weighing 137.50 gms, totally valued at Rs. 3,08,963/- were seized from her. The seized goods were confiscated absolutely by the original authority vide OIO No. 243/2013 dated 16.03.2013 and a penalty of Rs. 30,000/- was imposed under Section 112(a) of the Customs Act, 1962 on the Respondent herein. In the appeal filed by the Respondent herein, the Commissioner (Appeals), vide Order-in-Appeal No. C. Cus. No. 1811 & 1812/2013 dated 05.12.2013, ordered for redemption of the confiscated gold articles for the purpose of re-export on payment of redemption fine of Rs. 50,000/- and also reduced the Penalty to Rs. 10,000/-. Meanwhile, the confiscated gold articles had been disposed of by the Applicant department and an amount of Rs. 3,61,211/- was realized as sale proceeds. Since the confiscated gold had already been disposed of, the Respondent herein applied for the refund of sale proceeds. The Assistant Commissioner of Customs (Prev. Refunds), vide the aforesaid Order dated 29.09.2018, sanctioned refund of Rs. 1,67,150/- after adjusting duty, redemption fine, penalty, warehouse and handling charges and amount of pending penalty to be recovered from the Respondent, in an earlier case. In the appeal filed by the Respondent herein, the Commissioner (Appeals), vide the impugned Order-in-Appeal, held that no duty is applicable in respect of goods ordered for re-export and therefore, deduction of Customs duty from the sale proceeds was not in order.

3. The revision application has been filed by the Applicant department, mainly, on the grounds that though the gold was ordered to be re-exported in which case duty would not

be applicable, but as the sale proceeds realized from the domestic market (which is inclusive of duty component) are being refunded, it is appropriate that the duty component should be deducted from the sale proceeds.

4. Personal hearing was fixed on 27.03.2023, 19.04.2023 and 24.04.2023. However, no one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. The short point that arises for consideration is whether deduction of Customs duty component from the sale proceeds is in order when redemption of the confiscated goods was allowed for the purpose of re-export.

5.2 The Applicant department has fairly admitted that the Customs duty would not be applicable in the case of re-export. Therefore, in case the goods had not been disposed of before redemption for re-export was sought in terms of earlier Order of the Commissioner (Appeals), the department would have allowed re-export without payment of customs duty. However, the department is, now, contending that the customs duty component should be adjusted from the sale proceeds. In other words, it is, in a way, seeking to levy customs duty on the goods allowed for re-export. Thus, the present contention of the Applicant department is contrary to its own, in-principle, position that Customs duty is not leviable in case of re-export.

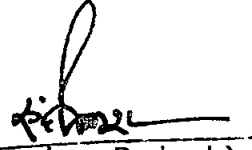
5.3 This matter can also be looked at from another perspective. The goods were allowed to be redeemed for re-export only. However, in the interim, the department disposed of the goods and it is, now, claimed that since the goods have been sold in the domestic market, hence, the sale proceeds are inclusive of Customs duty and, as such, adjustment of Customs duty component from the sale proceeds is in order. In other words, the department is seeking to place a case of redemption for re-export at par with a case of redemption for domestic consumption, when the goods had been disposed of in the interim. If this contention of the department was to be accepted, it would amount to accepting that the order of redemption for re-export automatically stood modified to and

can be given effect only as an order of redemption for domestic consumption, once the goods had been disposed of in the interim. Obviously, there is no authority in law to accept such a proposition.

5.4 Further, the goods were disposed of by the department pending statutory appellate remedy available to the Respondent herein. If present contention of the Applicant department was to be accepted, it would also lead to a situation where such statutory appellate remedy shall become restricted as irrespective of any favourable appellate order, only limited relief would be actually available.

5.5 In view of the above, the Government is in agreement with the Commissioner (Appeals) that customs duty component should not be adjusted while returning the sale proceeds when redemption had been allowed for re-export purposes only.

6. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

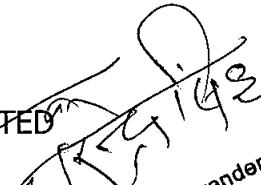
The Pr. Commissioner of Customs,  
Chennai-I, Airport, New Customs House,  
GST Road, Meenambakkam, Chennai-600 027.

Order No. 155/23-Cus dated 26-04-2023

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3<sup>rd</sup> Floor, New Customs House, GST Road, Meenambakkam, Chennai-600 016.
2. Smt. Samsun Hinaya, C/o Smt. S. Palanikumar, Advocate, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai - 600 001
3. Sh. S. Palanikumar, Advocate, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai-600 001.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



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