

SPEED POST



F. No. 380/37/B/2015-R.A.
F. No. 380/162/B/2016-R.A.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue.....23/11/22.....

ORDER NO.361-362/22- Cus dated 23-11-2022 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

- SUBJECT : Revision Applications filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 371/2015 dated 30.06.2015 and Corrigendum dated 19.09.2016, passed by the Commissioner of Customs (Appeals-I), Chennai.
- APPLICANT : Pr. Commissioner of Customs, Airport, Chennai-I Commissionerate, Chennai.
- RESPONDENT : Sh. Aroulmojy, Viry Chatillon, France.

ORDER

Two Revision Applications, bearing nos. 380/37/B/2015-R.A. dated 11.09.2015 and 380/162/B/2016-R.A. dated 13.10.2016, have been filed by the Commissioner of Customs, Chennai-I Commissionerate, New Custom House, Meenambakkam, Chennai (hereinafter referred to as the Applicant department) against Order-in-Appeal No. C. Cus-I-No. 371/2015 dated 30.06.2015 read with Corrigendum dated 19.09.2016, passed by the Commissioner of Customs (Appeals-I), Chennai. The first Revision Application no. 380/37/B/2015-R.A. dated 11.09.2015 has been filed against Order-in-Appeal No. C. Cus-I-No. 371/2015 dated 30.06.2015. The second Revision Application no. 380/162/B/2016-R.A. dated 13.10.2016 has been filed, subsequently, in the light of Corrigendum dated 19.09.2016 in pursuance of Order dated 01.08.2016 passed by the Hon'ble High Court of Judicature at Madras in WP No. 33448 of 2015. The Commissioner (Appeals-I) has on an appeal filed by Sh. Aroulmojy (herein-after referred to as the Respondent), vide the impugned OIA, modified the order of the Joint Commissioner of Customs (Adjudication-Air), New Custom House, Meenambakkam, Chennai, bearing no. 75/2015 ADC dated 25.05.2015 vide Order-in-Appeal dated 30.06.2015.

2. The brief facts of the case are that the Respondent arrived at Chennai, on 22.09.2014, from France by Emirates Flight and was intercepted by the officers of Air Intelligence Unit of Customs at the exit gate when he was going out through the green channel of the arrival hall after clearing immigration and Customs. The officers obtained the Customs Declaration Card, where in the Respondent had given a declaration that he had "gold jewellery (over Free Allowance)". The Respondent was again given an option to declare any gold or dutiable goods which he might be carrying, he gave a negative reply. Thereafter, on examination of his hand baggage, three small pouches were recovered which were found to be unusually heavy. The examination resulted in recovery of 499 numbers of gold coins with foreign markings, purity 22 karat, totally weighing 3980 grams. Further, during the course of personal search, the officers recovered 31400 Euros from the wallet of the Respondent which were not declared in his Customs Declaration Card. The value of the gold weighing 3980 grams was evaluated by the Govt. of India Gold Appraiser, as Rs. 98,30,600/-. As the Respondent herein had attempted to smuggle the

said gold by not declaring the same and as the Respondent had neither declared nor was in possession of any valid document, the recovered gold coins and foreign currency were seized under a Mahazar for further action under the Customs Act, 1962. The Respondent in his statement dated 22.09.2014, recorded under Section 108 of the Customs Act, 1962, admitted his offence and stated that he knew that basic declarations was to be made to Customs and he was eligible for free allowance; that he knew it was an offence to carry gold without declaring to Customs and without any duty payment; that he wanted to camouflage the gold in bullion form as it is not allowed and wanted to pass it as jewellery and so did not declare that he had gold bullion with him; that he wanted to evade detection by Customs and any penal action thereto; that he wanted to sell the gold for good margin of profit by evading Customs duty; that he wanted to sell the gold for good margin of profit and use the money for his personal needs; that he had planned and concealed the said gold in his hand baggage, with clear intention to evade customs duty by non-declaration and to clear out customs; that he also did not declare the Euro currency with him; and that he admitted his offence and requested for a lenient view as he had committed this offence out of ignorance and greed for money.

3. The revision applications have been filed by the Applicant department, mainly, on the grounds that though the Respondent herein had declared "Yes" against the Col.10(ii) – Gold jewellery (over free allowance), the gold coins brought by him cannot be categorised as gold jewellery; that the Respondent intentionally camouflaged gold in bullion form and represented it as gold jewellery; that though the Respondent was eligible to import 1 Kg gold at concessional rate of duty, he did not report to red channel for payment of duty and instead crossed through the green channel without payment of duty; that, therefore, the entire quantity of gold coin should have absolutely confiscated; that the Respondent also did not declare the foreign currency carried by him; that the issue of non-declaration/ mis-declaration of 3980 grams of gold coins cannot be divided into 1000 grams and 2980 grams, respectively, for re-export or for clearance on payment of duty at the concessional rate of 10% and on merit rate (36.05%); and that, therefore, OIA may be set aside and orders for absolute confiscation of the goods may be passed.

4. During the pendency of the Revision Applications, the Respondent filed WP No. 33448/2018 before the Hon'ble Madras High Court. The Hon'ble High Court disposed of the said Writ Petition, vide Order dated 01.08.2016, directing that the Order of Commissioner (Appeals) may be implemented if the department fails to obtain an interim or final order, within 30 days, in the subject Revision Applications. The Hon'ble Court also directed that, in the event, the department was unable to obtain any orders from the Revisional Authority, within the time permitted, the request for re-export should be considered. Pursuant to this Order of the Hon'ble High Court, the Commissioner (Appeals) issued the Corrigendum dated 19.09.2016 permitting re-export.

5. In the personal hearing held on 17.10.2022, 31.10.2022 and 18.11.2022, all in virtual mode, Sh. V. Anburaju, AC appeared for the Applicant department. During the hearing held on 31.10.2022, Sh. Anburaju, AC requested for a short adjournment to clarify whether the department had filed any appeal in the matter before the Commissioner (Appeals). In the hearing held on 18.11.2022, Sh. Anburaju, AC confirmed that the OIO dated 22.05.2015 was not challenged by the department before Commissioner (Appeals). He reiterated the contents of the RAs. No one appeared for the Respondent nor any request for adjournment has been received. A detailed written submission dated 30.10.2022 has been received in response to Notice of Personal Hearing dated 17.10.2022 on behalf of the Respondent. As sufficient opportunities have been granted, it is presumed that the Respondent does not wish to add anything by way of personal hearing.

6.1 The Government has examined the matter carefully. For appropriate disposal of the subject revision applications, it is necessary to first recollect the orders passed by the lower authorities in the matter.

6.2 The original authority, vide OIO dated 22.05.2015 has passed the following Order:

“(i) I order for confiscation of the seized 499 gold coins of 22 carat weighing 3980 gms and totally valued at Rs. 98,30,600/- under Section 111(I) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992. However, I give him an option to redeem

the same for re-export/ release on payment of fine of Rs. 22,50,000/- under Section 125 of the Customs Act, 1962. In case of exercising the option for release for home consumption, he has to pay concessional rate of duty @ 10% upto 1Kg of gold coins & merit rate of duty in foreign convertible currency on remaining quantity of 2980 gms of gold coins **or** he can exercise option for re-export for the remaining quantity of 2980 gms gold coins.

- (ii) I order to confiscate the foreign currency of EURO 31,400/- under Section 111(l) of the Customs Act, 1962. However, I redeem the same on payment of fine of Rs. 1,00,000/- under Section 125 of the Customs Act, 1962.
- (iii) I impose a penalty of Rs. 5,50,000/- (Rupees Five Lakhs Fifty Thousand Only) on Shri Aroulmojy under Section 112 (a) and (b) of the Customs Act, 1962."

6.3 The Commissioner (Appeals), vide OIA dated 30.06.2015, has passed the following Order:

"I set aside the order of LAA and Order:

- (i) release of 1000 gms of gold coins for home consumption on payment of concessional rate of duty;
- (ii) release the balance 2980 gms of gold coins for home consumption on payment of merit rate of duty;
- (iii) I confiscate the foreign currency and allow release on payment of redemption fine of Rs. 1,00,000/- (Rupees One Lakh Only) and the released foreign currency will be utilised for payment of duty for the above gold and if it falls short then the Appellate has to pay the balance in Foreign Currency;
- (iv) reduction of the personal penalty from Rs. 5,50,000/- to 50,000/- (Rupees Fifty Thousand Only)."

6.4 The Commissioner (Appeals), vide Corrigendum dated 19.09.2016 to OIA dated 30.06.2015, has passed the following Order:

"In case, the passenger Shri Aroulmojy, do not want to clear 2980 grams of gold coins for home consumption, re-export is allowed."

6.5 In view of the above, it is observed that the Commissioner (Appeals) has allowed following further relief to the Respondent over and above, what the original authority had given to the Respondent, i.e., (a) the order for confiscation of gold coins has been set aside and, consequently, no redemption fine has been imposed in this respect as against the redemption fine of Rs. 22,50,000/- imposed by the original authority; and (b) the penalty imposed on the Respondent has been reduced from Rs. 5,50,000/- to Rs. 50,000/- . The Government also observes that the Applicant department had not challenged the Order of original authority before the Commissioner (Appeals), even though at this stage it is being pleaded that the goods should be absolutely confiscated. Therefore, without traversing the merits of the OIO and in any way approving the views taken by the original authority (other than those specifically approved hereinafter), the Government confines itself to examining the further reliefs granted by the Commissioner (Appeals).

7.1 It is on record that the Respondent was intercepted at the exit gate while passing through the green channel. Though, admittedly he had made declaration of carrying gold jewellery in the Customs Declaration Form recovered from him when he was intercepted, the Respondent had not approached the red channel with this declaration for payment of duty. Thus, if the Respondent had not been intercepted by the Customs officers at the exit gate, he would have been successful in clearing the gold coins without payment of any duty. Thus, in effect, the Respondent had made no declaration and he produced the Declaration Form only upon interception after he had already opted for green channel i.e., opted not to pay duty. In this light, the Commissioner (Appeals) has totally misdirected himself in recording "that there is no misdeclaration/ non-declaration." As such, the Government holds that the original authority was correct in holding the goods liable to confiscation under Section 111(l) of the Customs Act, 1962.

7.2 In the facts and circumstances of the case and keeping in view the value of the offending goods, the Government observes that the original authority was already quite lenient in imposing a penalty of Rs. 5,50,000/- only. Thus, there was no scope for the Commissioner (Appeals) to have further reduced the penalty, as he has proceeded to do. 137

8. In view of the above, the revision applications are allowed by way of setting aside the impugned OIA read with the Corrigendum thereto. Consequently, the OIO dated 25.05.2015 is restored.


(Sandeep Prakash)

Additional Secretary to the Government of India


The Principal Commissioner of Customs, Airport,
Chennai-I Commissionerate,
New Custom House, Meenambakkam,
Chennai-600027

Order No. 361-362/22-Cus dated 23-11-2022

Copy to:

1. The Commissioner of Customs (Appeals-I), 60 Rajaji Salai Custom House, Chennai-600001.
2. Shri Aroulmojy, Viry Chatillon, France, C/o Shri Ganesh, Advocate, F-Block 179, Annanagar (East), Chennai 600102.
3. PA to AS(RA).
4. Guard File.
5. Notice Board.

6. Spare Copy.


ATTESTED
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