

SPEED POST



F. No. 380/63/B/2015-RA
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. 14/2/23

Order No. 51 /23-Cus dated 13.2.2023 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. C. Cus. I No. 395/2015 dated 24.08.2015, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : The Pr. Commissioner of Customs, Chennai-I.

Respondent : Sh. Jameel Ahmed, Chennai.

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ORDER

Revision Application No. 380/63/B/2015-RA dated 29.12.2015 has been filed by the Pr. Commissioner of Customs, Chennai-I, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. C. Cus. I No. 395/2015 dated 24.08.2015, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, set aside the Order-in-Original No. 128/2015-16-AIRPORT dated 09.06.2015, passed by the Joint Commissioner of Customs (Airport), Chennai, to the extent of absolute confiscation of the gold seized from Sh. Jameel Ahmed, Chennai (hereinafter referred to as the Respondent) and ordered the release of the same on payment of redemption fine of Rs. 1,50,000/- under Section 125 of the Customs Act, 1962.

2. Brief facts of the case are that the Respondent, who had arrived from Trichy, on the domestic leg of Air India Flight at Chennai Airport, on 05.11.2014, was intercepted by the Customs Officers at the exit crossing after through the green channel. Upon his search, one gold bar and three pieces with foreign markings, totally weighing 200 gms. and collectively valued at Rs. 5,26,000/-, were found concealed in a handkerchief taped with white colour bandage tape which was further kept concealed inside the inner garments worn by the Respondent. The Respondent in his statement dated 05.11.2014, recorded under Section 108 of the Customs Act, 1962, stated that he was returning from Trichy as domestic passenger in an International Air India Flight IX-681; that he admitted the subject gold was found concealed inside his inner garment; that the gold was given to him by an unknown person near the toilet during the flight who offered him Rs. 5,000/- to carry it outside the Chennai Airport; that he was instructed to conceal the gold on his person and not to declare; and, that he is not the owner of the gold. The Respondent, vide letter dated 05.11.2004, also requested that the case may be adjudicated without the issue of the show cause notice. The original authority, vide Order-in-Original dated 09.06.2015, ordered for absolute confiscation of the gold weighing 200 gms. valued at Rs. 5,26,000/-, under Section 111 (d) & (l) of the Customs Act, 1962 and also imposed the penalty of Rs. 50,000/- on the Respondent. In the appeal filed by the Respondent, the Commissioner (Appeals) set aside the absolute confiscation and allowed the redemption of the gold on payment of fine of Rs. 1,50,000/-, but upheld the penalty.

3. The revision application has been filed, mainly, on the grounds that the Respondent had made a 'NIL' declaration in his Customs Declaration Form and was attempting to smuggle the gold by way of concealment in his inner garment; that the Respondent had categorically stated that the gold did not belong to him and he was only attempting to smuggle it for a consideration of Rs. 5,000/-; that the Commissioner (Appeals) has clearly found that in this case modus operandi and mens-rea was established; and that,

therefore, it was incorrect of the Commissioner (Appeals) to set aside the order of the original authority.

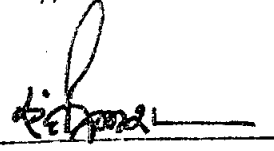
4. Personal hearing in the matter was fixed on 30.08.2018, 21.11.2019, 05.12.2019, 09.01.2023, 27.01.2023 and 13.02.2023. In the personal hearing held, in virtual mode, on 13.02.2023, Sh. Anburaju, AC appeared for the Applicant department and reiterated the contents of the RA. He informed that though the Hon'ble High Court had, vide Order dated 14.09.2014, permitted re-export, the goods have not been re-exported as yet and are in departmental custody still. No one appeared for the Respondent on any of the dates fixed for hearing 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. The Government has carefully examined the matter. It is observed that the issues of liability to confiscation of the subject gold under Section 111 of the Customs Act, 1962 and imposition of penalty under Section 112 stand concluded with the order of Commissioner (Appeals) since the Respondent has not challenged the said order in an appropriate revision application before the Government of India. The only issue, therefore, left to be decided, in this revision application, is whether the Commissioner (Appeals) could have interfered with the discretion exercised by the original authority in not allowing the redemption of the seized gold.

6. The Government observes that the original authority had denied the release of seized gold on imposition of redemption fine, under Section 125 of the Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of Garg Woollen Mills (P) Ltd. vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)], that the option to release 'prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex LLP (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has held "that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant considerations". Further, in the case of P. Sinnasammy {2016 (344) ELT 1154 (Mad.)}, the Hon'ble Madras High Court has held that "when discretion is exercised under Section 125 of the Customs Act, 1962, the twin test to be satisfied is "relevance and reasons"". Hon'ble Delhi High Court has, in the case of Raju Sharma Vs. UOI {2020 (372) ELT 249 (Del.)}, held that "Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse, or tainted by patent illegality, or is tainted by oblique motives." In holding so, the Hon'ble High Court has relied upon the judgment of Apex Court in the case of Mangalam Organics Ltd. {2017 (349) ELT 369 (SC)}. Thus, the Commissioner (Appeals) could have interfered with the discretion exercised by the original authority only if it would have been tainted by any of vices highlighted by the Hon'ble Courts. In the present case, the original authority has ordered for absolute confiscation as the gold was ingeniously concealed and as the Respondent

was not a bona fide passenger. It has also been noted by the original authority that the Respondent had, subsequently, produced a duty paid challan purporting to be covering the duty paid on the seized gold so as to represent that the gold bar seized from him was duty paid. However, it was found that the said challan was manipulated as the serial no. and markings of the gold bar were missing. It is also observed that the Commissioner (Appeals) himself has found that the mens rea was established in this case. Therefore, keeping in view the judicial pronouncements above and the facts of this case, it was incorrect of the Commissioner (Appeals) to interfere with the discretion exercised by the original authority.

7. In view of the above, the revision application is allowed. Consequently, the Order-in-Original dated 09.06.2015, passed by the original authority, is restored.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Pr. Commissioner of Customs,
Chennai-I (Airport),
New Custom House,
GST Road, Meenambakkam,
Chennai-600027.

Order No. 51 /23-Cus dated 13.2.2023

Copy to:

1. Sh. Jameel Ahmed, No. 11/6, Hyder Garden, 4th Street, Permbur, Chennai-600082.
2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. PPS to AS (RA).
4. Guard file.
- ✓ 5. Spare Copy.
6. Notice Board.

ATTESTED



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