IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 11.6.2018

Appeal No. C/50601/2018-SM

(Arising out of Order-in-Appeal No. C(A)Cus/482/2014 dated 1.8.2014 passed by the Commissioner of Customs (Appeals), New Delhi)

CC (Prev.), Delhi — Appellant

Vs.

M/s Shah Faisal Mukri — Respondent

Appearance

Shri P. Juneja, DR - for the appellant

None - for the respondent

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 52185/2018

Per Ms. Archana Wadhwa:

Being aggrieved with the order passed by the Commissioner (Appeals), Revenue has filed the present appeal.

2. I have heard Shri P. Juneja, ld. DR appearing for Revenue. Nobody appeared for the respondent.

3. As per the facts on record, the respondent was apprehended from a train at New Delhi Railway station and his search resulted in

recovery of gold jewellery, which after due adjudication, was absolutely confiscated by the original adjudicating authority.

4. On appeal, the appellate authority observed that gold jewellery in question was not a prohibited item and as such allowed the re-export of the same on payment of redemption fine and penalty. For better appreciation, the relevant paragraph from the impugned order is reproduced:

> "5. At the outset, I find that the facts are admitted. Regarding the issue of gold jewellery, it is observed that the Ld. Adjudicating Authority had confiscated the same absolutely; hence no option for Redemption and for re-export was provided. The contention is that they are not prohibited items under Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade Policy Environment Protection Act; hence, they need to be allowed for re-export as provided under Section 80 of the Act ibid. I find that the passenger is not eligible passenger to import such jewellery in accordance with the referred provisions. However, the issue is whether the said goods are 'prohibited goods' under the provisions of Customs Act, 1962. The term 'prohibited goods' has been defined under Section 2 (33) of the Act ibid essentially to be read with Section 11 of the Act ibid. Hence, it is essential that the subject goods need to be notified as 'prohibited goods' for application of Section 111(d) of the Act ibid. I find that there is nothing on record to say that such goods are specifically prohibited from importation under the provisions of Customs Act, 1962 or under any law in force. Hence, I am of the view that the contention raised by the appellant has force regarding the element of prohibited goods with reference to Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade Policy Environment Protection Act. I find support from

> the case law Yakub Ibrahim Yusaf Vs. Commissioner of Customs, Mumbai – 2011 (263) ELT (Tri.-Mumbai). Accordingly, the order relating to absolute confiscation is set aside.
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> Now the issue is regarding re-export of gold jewellery taking recourse to Section 125 of the Customs Act, ibid. Keeping in view the given circumstances and the judgement in the case of Mukadam Rafique Ahmed as reported in 2011 (270) ELT 447 (GIO), I allow the re-export of the said goods against combined Redemption fine of Rs.5,00,000/- under Section 125 of the Act ibid and Penalty of Rs. 5,75,000/- under Section 112(a) of the Act ibid. The appellant is required to exercise option of re-export within two months of the receipt of this order."

5. As is seen from above, the appellate authority has gone by the fact that the gold jewellery in question is not prohibited goods as defined in Section 2(33) of the Customs Act. If that be so, the respondent has to be given the option to re-export the same.

6. I find that it is not the Revenue's case that the gold jewellery in question is prohibited item. In terms of the liberalized policy, jewellery can be brought and cleared on payment of duty. As such, the only offence on the part of the respondent is that the jewellery in question was not declared by them thus making it liable to confiscation subject to the provision of Section 125 of the Customs Act, which allow confiscation of the goods and consequent redemption subject to payment of redemption fine and penalty. As such, I find that the views adopted by Commissioner (Appeals) are in

accordance with law. I find no justifiable reasons to interfere with the impugned order of Commissioner (Appeals). Accordingly, Revenue's appeal is rejected.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

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