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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 380/52/B/WZ/2019/4333

Date of Issue 15/10/2019

ORDER NO. 03/2018-CUS (WZ)/ASRA/MUMBAI DATED 20.09.2019 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, CSI Airport, Mumbai

Respondent : Shri Altamash Akbar Shaikh

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-43/19-20 dated 30.04.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by the Commissioner of Customs, CSI, Mumbai. (herein referred to as Applicant) against the order MUM-CUSTOM-PAX-APP-43/19-20 dated 30.04.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Altamash Akbar Shaikh Indian citizens at the CSI Airport, Mumbai on 17.03.2018 after clearing themselves from customs at the green channel. Examination of his baggage and person resulted in recovery of 3 three gold chains, and 36 pieces of gold links totally weighing 290 grams valued at Rs. 8,12,893/- ( Rupees Eight Lakhs Twelve thousand Eight hundred and Ninety three ). The gold was indigenously concealed in the inner linings of Burkas, Jeans Pant and Vaseline Jar.

3. After due process of the law vide Order-In-Original No. ADC/AK/ADJN/167/2018-19 dated 27.10.2015 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. 90,000/- (Rupees Ninety thousand) under Section 112 (a) and (b) of the Customs Act,1962.

4. Aggrieved by this order the respondent filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. MUM-CUSTOM-PAX-APP-431/19-20 dated 30.04.2019 allowed the gold to be redeemed for re-export on payment of Rs. 1,50,000/- ( Rupees One lac Fifty thousand) as redemption fine and upheld the penalty of Rs. 90,000/- already imposed and partially allowed the appeal of the Respondents.

5. Aggrieved with the above order the Applicant department has filed this revision application inter alia on the grounds that;

5.1 The Passenger had tried to clear the impugned gold without making a declaration as required under section 77 of the Customs Act, 1962; not an eligible passenger to import gold as per the provision of Notification no. 50/2017-Customs dated 30.06.2017 read with rule 3 and 5 of the baggage rules 2016 and hence the importation was in violation of para 2.26 of the

foreign trade policy(2015-20). Therefore goods become prohibited in terms of section 2(33) of the Customs Act,1962 and the impugned goods are liable for confiscation u/s 111 (d), (l) & (m) of the Customs Act,1962 and the passenger liable for penalty u/s 112 (a) & (b) Customs Act,1962; It is not in dispute that the gold was brought in a concealed manner and there was an attempt to smuggle the gold into India; The recovered gold was concealed in the inner lining of Burkas, Jeans and in a vaseline jar, indicating greed and criminal mindset of the passenger, hence it is a fit case for absolute confiscation; The circumstances of the case and the intention of the passenger were not at all considered by the Appellate authority while allowing the gold on redemption fine and penalty; Had the passenger not been intercepted he would have escaped with the impugned goods; The passengers had concealed the gold with the express intention of evading duty and they are also not an eligible to import gold; releasing the gold on redemption fine depends on the facts and circumstances of the case and is not binding as a precedent.

5.2 The Revision Applicant cited case laws in support of thier contention and prayed that the impugned Order in Appeal be set aside and the order in original be upheld and /or any other order as deemed fit.

6. In view of the above, a personal hearing in the case was held on 06.09.2019. Smt. Pushpa Anchan, Superintendent, Customs Mumbai, attended the hearing and reiterated the submissions in the Revision Applications and pleaded that the Order in Appeal be set aside. Shri Prakash Shingrani, Advocate attended the hearing on behalf of the Respondent and informed that the gold has been disposed and a refund application has been filed.

7. The Government has gone through the case records. It is observed that the respondent did not declare the gold and it was ingeniously concealed in the inner lining of Burkas, Jeans and in a vaseline jar. The Respondents had concealed the gold deliberately so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a mere case of mis-declaration. The Respondents has blatantly attempted to smuggle the gold into India in contravention of the provisions of the Customs, Act 1962 by concealing the gold in order to hoodwink the Customs Officers. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had willfully


hidden the gold ingeniously and if they were not intercepted before the exit, the gold would have been taken out without payment of customs duty.

8. The above acts have therefore rendered the Respondent liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalty. The impugned Revision Application is therefore liable to be upheld and the order of the Appellate authority is liable to be set aside.

9. Accordingly, The impugned Order in Appeal No. MUM-CUSTOM-PAX-APP-431/19-20 dated 30.04.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III is set aside. The order of the Original Adjudication authority is therefore upheld as legal and proper.

10. Revision application is accordingly allowed.

11. So, ordered.

  
 ( SEEMA ARORA )  
 Principal Commissioner & ex-officio  
 Additional Secretary to Government of India

ORDER No. 03/2019-CUS (WZ) /ASRA/

DATED 20.09.2019

To,

1. The Principal Commissioner of Customs (Airport),  
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri P. Shingrani, Advocate  
12/334, Vivek, New MIG Colony, Bandra (E) Mumbai - 400 051.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.