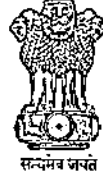


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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

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F.No. 380/96/B/WZ/2018-RA/4-339

Date of Issue 15/10/2019

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ORDER NO. 01/2019-CUS (WZ) / ASRA / MUMBAI/ DATED 20.09.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

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Applicant : Principal Commissioner of Customs (Airport), Mumbai.

Respondent : Capt. Pratap Vijay

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-453/18-19 Dated 28.08.2018 passed by the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Principal Commissioner of Customs (Airport), Mumbai, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTM-PAX-APP-453/18-19 Dated 28.08.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 10.08.2016 the screening of the baggage of the Respondent by the Officers of Customs noticed some unusual dark patches and put a white chalk mark on the baggage. The mark was an indication to identify the baggage for further scrutiny later, the officers noticed that the Respondent trying to wipe out the mark and took up detailed scrutiny. Scrutiny of the baggage resulted in the recovery of 5 gold bars of 100 gms each. Scrutiny of the hand baggage also resulted in the recovery of 2 gold bars of 20 gms and 10 gms respectively, totally weighing 530 gms and valued at Rs. 15,65,567/- (Rupees Fifteen lacs Sixty five thousand Five hundred and sixty seven). The baggage belonged to Capt. Pratap Vijay, Jt. General Manager, Air India. In his initial statement he admitted the carriage, concealment and non-declaration of the two gold bars of 20 gms and 10 gms purchased by him. With regard to the checked in trolley bag he stated that the same was given to him by a Bell boy of hotel Trident to be delivered to his wife and son in Mumbai and was informed that it contained Dry fruit cheese chocolates etc.

3. After due process of the law vide Order-In-Original No. ADC/AK/ADJN/203/2017-18 dated 26.03.2018 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d), (l), (m) of the Customs Act 1962 and imposed penalty of Rs. 2,50,000/- ( Rupees Two lacs Fifty thousand ) under Section 112 (a) & (b) of the Customs Act,1962. A penalty of Rs. 5,000/- was also imposed under section 114 (i) and 114(iii) of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-453/18-19 Dated 28.08.2018 held that the evidence in the case of the Respondent was not sufficient to hold him guilty of smuggling gold and set aside the penalty imposed under Section 112 (a) & (b), 114 (i) and 114(iii) of the Customs Act,1962 by the lower authority.

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

5.1 As per Relevant Rule 9 (2) of the Baggage (Amendment) Rules, 2016 a crew member of an aircraft shall be allowed to bring items gift like chocolates, cheese, cosmetics and other petty gift items upto a value of Rs.1500/- only at the time of arrival of the aircraft from foreign journey for their personal or family use. Capt. Pratap Vijay cannot be considered as an eligible passenger to import gold into India in terms of Notification No. 31/2016 - Customs (NT) dated 01.03.2016 and the seized gold cannot be considered as articles permitted to be imported by the crew as per Rule 9(2) of the Baggage (Amendment) Rules, 2016.

5.2 Capt. Pratap Vijay failed to declare the seized gold in the prescribed crew declaration form to the Customs at the time of his arrival from Jeddah to CSI Airport, Mumbai. Hence he had failed to make a true and correct declaration as required under Section 77 of Customs Act, 1962.

5.3 The seized goods was in such nature and quantity which cannot be treated as a bonafide baggage of the passenger/crew in terms of Notification No. 12/2012 - CUS dated 17.03.2012 and with Rule 9 of the Baggage Rules, 2016 and hence the importation was in violation of para 1.26 of the Foreign Trade Policy (2015-20). Hence, they become prohibited goods in terms of section 2(33) of the Customs Act, 1962 and liable for confiscation and penalty.

5.4 Commissioner (Appeals) in his findings has observed that he is inclined to accept that there is a reasonable possibility of having been duped by the hotel attendant with the name Mr. Imran Shaikh, at Hotel Trident, Jeddah who had requested the appellant to carry the bag to India and that he had no conscious possession of the contraband, and therefore benefit of doubt can be given to him. However, In order to ascertain the veracity of the statement, a verification was conducted from the Hotel Trident, Jeddah through the Hotel Trident, Mumbai. It has been categorically denied by the Hotel Trident, Jeddah that they had employed any one with the name Mr. Shaikh or Imran Shaikh in their Hotel. This valid piece of evidence that proves that the Respondent has concocted the story with a malafide intention to misguide the investigation and escape from the clutches of law.

5.5 The Respondent's contention of ignorance of the contents of the bags has already been found to be false as he was found trying to wipe out the 'X' Mark on his checked-in baggage marked by Customs Officer. This clearly indicates his culpable mental state. It is also observed that the Capt. himself admitted ownership over the seized two gold bars weighing 20 grams and 10 grams respectively, which he is not eligible to bring in India. Thus, it establishes

that the Capt. has carried out the entire operation of bringing gold in a pre-meditated manner.

5.6 Merely assuming that a person of his stature and financial background would risk his job and prestige for a small amount of Rs. One lac cannot be accepted as a valid ground for grant of immunity and exonerate him for his wrongdoings.

5.7 From the plain reading of the section 112 it becomes crystal clear that any person who acquires or from whose possession the confiscated goods are recovered is liable for penalty. Commission of Customs (Appeals) has accordingly erred while setting aside the penalty imposed on the Capt., Respondent.

5.8 The Revision Applicant prayed for setting aside the order of the Appellate authority or any other order as deemed fit and proper.

6. A personal hearing in the case was held on 11.09.2016. Shri P. Shingrani, Advocate for the respondent and Smt Pushpa Anchan, Supdt., attended the hearing. The respondent denied mensrea, and that investigations at home were not adverse and the first statement was retracted and reiterated their written submissions. The Applicant department also reiterated their written submissions and submitted that no declaration was made as required under section 77 of the Customs Act 1962.

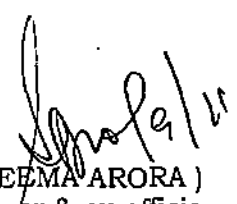
7. The Government has gone through the facts of the case. The respondent has denied that he is the owner of the gold. It is the Respondents case that he was carrying the impugned baggage containing the gold for one Mr. Shaikh who was the bell boy working in Hotel Trident, Jeddah. There is nothing to suggest that Shri Imran Shaikh was previously known to the Respondent. It is a bit puzzling that a person of stature of the Respondent would oblige a bell boy in carrying his luggage. Even if the Respondent wanted to oblige Mr. Shaikh he should have conducted a thorough scrutiny of the baggage. It is also a well known fact that smuggling of gold and contraband is carried out through carriers and the Respondent being in the allied industry should be aware of this. Having worked in an Airline industry for 20 years the respondent should have ascertained the contents of the baggage before accepting to deliver the same. Further, The Respondent was found trying to wipe out the mark made by the Customs officers who had identified it for scrutiny. The Respondent in his statement informed that he was aware that the baggage was marked for further scrutiny and has admitted that he tried to erase the mark to avoid detailed examination of the baggage. Investigations conducted by the Air Intelligence unit has

revealed that there is no person by name "Imran Shaikh" working in Hotel Trident, Jeddah. As such the Respondents submissions needs to be taken with a pinch of salt and belies his experience of working in AirIndia for 20 years. The retraction of his initial statement appears to be an after thought and his submissions therefore do not appear to be genuine. Thus the acts of Respondent makes him liable for penal action under section 112 (a) & (b) of the Customs Act, 1962. The Order in Appeal setting aside the penalty levied is therefore liable to be set aside and the Order-in-original is liable to be upheld.

8. The Government therefore agrees with the contentions of the Applicant department. Government observes that the facts of the case justify imposition of penalty imposed. The Order in Appeal is therefore set aside. The absolute confiscation of the impugned gold is upheld. The penalty of Rs. 2,50,000/- ( Rupees Two lacs Fifty thousand ) under Section 112 (a) & (b) of the Customs Act,1962 is upheld. Government, however observes that once penalty has been imposed under section 112 (a) and (b) there is no necessity of imposing a penalty under section 114. The penalty of Rs. 5,000/- imposed under section 114 (i) and 114(iii) of the Customs Act,1962 is set aside.

11. Revision application is accordingly disposed.

12. So, ordered.

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

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

DATED 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.