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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 380/13/B/WZ/2019

/4345

Date of Issue

15/10/2019

ORDER NO 05/2019-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.

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

Respondent : Shri Jizam C. Nazimudeen

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-733/18-19 Dated 27.11.2018 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-CUSTOM-PAX-APP-733/18-19 Dated 19.11.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 27.03.2014 the Respondent arrived at the CSI Airport from Dubai He was intercepted after he had crossed the green channel. Examination of his person resulted in the recovery of one gold chain and one gold bangle totally weighing 274 gms valued at Rs. 7,52,918/- (Rupees Seven Lacs Fifty two thousand Nine hundred and eighteen).

3. After due process of the law vide Order-In-Original No. JC/RR/ADJN/143/2014-15 dated 27.10.2014 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. 50,000/- (Rupees Fifty thousand) under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the Respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-733/18-19 Dated 19.11.2018 set aside the absolute confiscation and allowed re-export on payment of redemption fine of Rs. 1,50,000/- (Rupees One Lac Fifty thousand) and upheld the penalty imposed by the lower authority.

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

5.1 It is an admitted fact that the passenger had not declared the gold jewellery as required under section 77 of the Customs Act,1962 and opted to clear himself through the green channel; The manner of recovery of the gold indicates premediated and deliberate act to evade customs duty; The circumstances of the case and the intention of the passenger were not at all considered by the Appellate authority; The option to redeem the gold under section 125 of the Customs Act,1962

is the discretionary power of the Adjudication authority, and taking the facts and gravity of the case the Adjudication authority has rightly ordered absolute confiscation; Had the passenger not been intercepted he would have escaped with the impugned goods; The passenger did not appear before the Adjudication authority and approached the Appellate authority with fresh evidence before the appeal, which is contrary to Rule 5(1) of the Customs (Appeal) Rules 1982.

5.2 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 29.08.2019. Shri P. Shingrani, Advocate for the respondent and Smt. Pushpa Anchan, Supdt., attended the hearing, The respondent reiterated that the passenger was a foreign national 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. A proper written declaration of the impugned gold was not made by the Respondent as required under Section 77 of the Customs Act, 1962 and he preferred to use the facility of the green channel inspite of having dutiable goods, under the circumstances confiscation of the gold jewelry is justified.

8. However, there are no allegations that the gold was ingeniously concealed. The Appellate order confirms that the Respondent is an NRI, the gold was purchased for the Respondents sisters marriage and he has submitted the purchase receipts. The import of gold is restricted not prohibited. In view of the above facts, the Government is of the opinion that gravity of the offence has to be considered for punishment and under the circumstances absolute confiscation of the gold in this case would be a harsh option. Further, there are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised and the goods released to the owner, and where such owner is not known, the person from whose possession or custody such

goods have been seized. Under the circumstances absolute confiscation cannot be justified. Release of the goods on payment of fine and penalty cannot be considered as a loss of revenue, and the Government is therefore inclined to agree with the Appellate order and the release of the gold on payment of redemption fine and penalty is justified. The Revision application is therefore liable to be dismissed.

10. Revision application is accordingly dismissed.

11. So, ordered.


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

ORDER No. 05/2019-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.