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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. 380/21/B/WZ/2019 / 4300

Date of Issue 15/10/2019

ORDER NO. 67/2019-CUS (WZ) / ASRA / MUMBAI/ DATED 16.09.2019 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 Alaaeldin Mustafa Yousif Gasmalla

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1012/18-19 Dated 17.01.2019 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-1012/18-19 Dated 17.01.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 19.12.2017 the Respondent and his wife both Sudanese passport holders arrived at the CSI Airport from Khartoum. He was intercepted after he had crossed the green channel. Examination of his person resulted in the recovery of 8 gold bangles and one gold bar totally weighing 1563 gms valued at Rs. 39,41,569/-.

3. After due process of the law vide Order-In-Original No. ADC/AK/ADJN/322/2018-19 dated 17.10.2018 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. 3,25,000/- under Section 112 (a) 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-1012/18-19 Dated 17.01.2019 set aside the absolute confiscation and allowed re-export on payment of redemption fine of Rs. 9,00,000/- (Rupees Nine Lacs) 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 The Respondent being a tourist of foreign origin is allowed to bring in used personal effects only; The passenger attempted to smuggle the 8 gold bangles and one gold bar weighing 1563 gms valued at Rs. 39,41,569/-. The seized gold and bar cannot be treated as bonafide baggage; Being a foreign national he is not an eligible passenger to import gold as per the provision of Notification no. 50/2017-Customs dated 30.06.2017; As per the provisions of section 80 of the Customs Act 1962 where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77 ibid the proper officer may at the request of the passenger, detain such article for purpose of being returned to him on his leaving India. In this case the passenger has not declared the same on his arrival in India, therefore the order of the Commissioner (Appeals)

allowing re-export is not proper; The recovered gold items were cleverly concealed in a pouch kept in the pockets of the Kurta worn by the passenger indicating greed and criminal mindset of the passenger, hence it is a fit case for absolute confiscation; The resort to section 125 of the Customs Act 1962 to impose fine in lieu of confiscation cannot be so exercise as to give a bonanza or profit for an illegal transaction of imports.

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 Shri R. P. Gajwani, 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 goods are justified.

8. However, it is observed that the gold was recovered from a pouch which was recovered from the pockets of the kurta worn by the Applicant. Gold being precious is normally kept in safe custody and as such this cannot be considered as indigenously concealed. The Respondent in his statements has averred that he has brought the gold for trade ie for sale and purchase merchandise for his shop abroad, being a foreigner the question of eligibility for import does not arise. The eligibility criteria under provision of Notification no. 50/2017-Customs dated 30.06.2017 is for citizens of Indian origin. There is no allegation that the Respondent has any past history of such misdemeanors or that he is a habitual offender and there are no other claimants for the gold. 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 is a very harsh option.


9. 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. The Government notes that as the respondent is a foreigner absolute confiscation cannot be justified and is therefore inclined to allow the gold for re-export on suitable redemption fine and penalty.

10. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold weighing 1563 gms valued at Rs. 39,41,569/- (Rupees Thirty nine lacs Forty one thousand Five hundred and Sixty nine) for re-export on payment of redemption fine and penalty. Government however notes that the value of the gold and facts of the case justify an increase in the Redemption fine and penalty imposed. The Redemption fine of Rs. 9,00,000/- (Rupees Nine Lacs) imposed on the Respondent is increased to Rs. 12,00,000/- (Rupees Twelve lakhs). The penalty of Rs. 3,25,000/- (Rupees Three lacs Twenty five thousand) imposed under section 112(a) of the Customs Act, 1962, is increased to 5,00,000/- (Rupees Five lakhs).

11. Revision application is accordingly disposed off.

12. So, ordered.


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

ORDER No. 67/2019-CUS (WZ) /ASRA/

DATED 16-09-2019

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.