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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. 380/59/B/WZ/2019 | 4391

Date of Issue 15/10/2019

ORDER NO. 02/2019-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 Nikhil P. Pandya

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-84/19-20 Dated 16.05.2019 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-CUSTOMS-PAX-APP-84/19-20 Dated 16.05.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 26.11.2018 the Air Intelligence unit, CSI, Mumbai intercepted the Respondent after he had crossed the green channel. Examination of his person resulted in the recovery of one belt buckle of crude gold weighing 250 gms valued at Rs. 7,05,791/- (Rupees Seven lacs Five thousand seven hundred and ninety one).

3. After due process of the law vide Order-In-Original No. AIRCUS/T2/49/1018/2018'C' dated 26.11.2018 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. 50,000/- (Rupees Fifty thousand) 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-CUSTOMS-PAX-APP-84/19-20 Dated 16.05.2019 set aside the absolute confiscation and allowed re-export on payment of redemption fine of Rs. 2,00,000/- (Rupees Two 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 passenger attempted to smuggle the one belt buckle of crude gold weighing 250 gms valued at Rs. 7,05,791/- (Rupees Seven lacs Five thousand seven hundred and ninety one). The seized gold buckle cannot be treated as bonafide baggage in terms of 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; The recovered gold was in the form of a buckle, 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 resort to section 125 of the Customs Act,1962 to impose fine in lieu of confiscation cannot be exercised to give a bonanza for an illegal transaction of import.;

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 03.09.2019. Shri Nikhil P. Pandya the respondent and Shri Vishwam Thaker attended the hearing. The respondent reiterated that the gold was brought with his savings, he intends to re-export the goods and is ready to pay the fine and penalty and requested for re-export of the gold.


7. The Government has gone through the facts of the case. The gold was brought in the form of a belt buckle. The respondent was intercepted after he had cleared the green channel. The Appellate authority in its order, has extensively dwelt on exercising the discretionary powers of section 125 of the Customs Act,1962 and discussed case laws in its favour. The Government views however, are not congruent with the said assertions. 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. The manner of concealment ie converting the gold into a belt buckle, clearly indicates that there was a blatant attempt to avoid its detection by the Customs authorities and smuggle the gold into India clandestinely. The facts of the case make it clear that the respondent actions were to conceal the gold and if he was not intercepted he would have escaped the payment of 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-84/19-20 Dated 16.05.2019 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. 08/2019-CUS (WZ) /ASRA/

DATED 16-09-2019

To,

1. The Principal Commissioner of Customs (Airport),  
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Nikhil P. Pandya, 25/44, Govind Nagar, Sodawala Lane, Near  
Hanuman Temple, Borivali ( W), Mumbai- 400 092.

Copy to:

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