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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. 380/15/B/WZ/2019 /4368

Date of Issue 15/10/2019

ORDER NO. 10/2019-CUS (WZ)/ASRA/MUMBAI DATED 30.09.2019 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 : Pr. Commissioner of Customs, CSI Airport, Mumbai

Respondent : Smt. Fathimath Raseena Mohammed

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-741/18-19 dated 20.11.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by the Pr. Commissioner of Customs, CSI, Mumbai. (herein referred to as Applicant) against the order MUM-CUSTOM-PAX-APP-741/18-19 dated 20.11.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Smt. Fathimath Raseena Mohammed Indian citizen at the CSI Airport, Mumbai on 13.02.2017 after clearing herself from customs at the green channel. Examination of her person resulted in recovery of 14 (Fourteen) gold bars totally weighing 1632 grams valued at Rs. 43,31,194/- ( Rupees Forty three Lakhs Thirty one thousand One hundred and ninety four ). The gold was wrapped in black coloured adhesive tapes and recovered from the top undergarment worn by the respondent, Smt. Fathimath Raseena Mohammed.

3. After due process of the law vide Order-In-Original No. ADC/AK/ADJN/69/2017-18 dated 09.11.2017 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 but allowed redemption of the gold on payment of redemption fine of Rs. 6,50,000/- ( Rupees Six lacs Fifty thousand) and imposed penalty of Rs. 4,50,000/- ( Rupees Four lacs Fifty thousand) under Section 112 (a) and (b) of the Customs Act,1962.

4. Aggrieved by this order the Department Applicant filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. MUM-CUSTOM-PAX-APP-741/18-19 dated 20.11.2018 rejected appeal of the department and upheld the order of the original adjudicating authority.

5. Aggrieved with the above order the Department Applicant 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; The seized gold bars cannot be treated as bonafide baggage in terms of the provision of Notification no. 12/2012-Cus dated 17.03.2012 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. 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; By cleverly concealing the gold beneath the upper undergarment falls under the ambit of ingenious concealment; The manner of recovery of the gold indicates the concealment was not only ingenious one but also 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 Appellate authority has therefore erred in allowing redemption of the gold.

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the impugned Order in Appeal be confiscated absolutely or pass 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 order has been executed and the gold released.

7. The Government has gone through the case records. A written declaration of gold was not made by the Respondent as required under Section 77 of the Customs Act, 1962. The passenger had concealed the gold with the express intention of evading duty and she is also not an eligible passenger to import gold. Under the circumstances confiscation of the gold is justified.

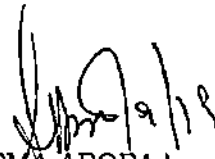
8. It is observed that the respondent did not declare the gold and the recovered gold was wrapped in black coloured adhesive tapes and recovered from the top undergarment worn by the respondent. The impugned gold was concealed by the respondent in a very clever manner. Import of gold is restricted not prohibited. There is no dispute regarding ownership of the gold. There are no recorded previous offences registered against the Applicant. The respondent has been residing at Dubai for the last 4(four) years. There is also evidence of financial purchase on record. Under the circumstances absolute confiscation pleaded for by the Department Applicant is a harsh option and cannot be justified.

9. 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 the Government therefore holds that the Original Adjudicating Authority has rightly allowed the gold on redemption fine and imposed penalty. 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 is therefore inclined to allow the gold on suitable redemption fine and penalty.

10. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold weighing 1632 grams valued at Rs. 43,31,194/- ( Rupees Forty three Lakhs Thirty one thousand One hundred and ninety four ) on payment of redemption fine and penalty. Government however notes that the value of the gold being high and considering the facts of the case, an increase in the Redemption fine and penalty imposed is justified. The Redemption fine of Rs. 6,50,000/- ( Rupees Six Lacs Fifty thousand ) imposed on the Respondent is increased to Rs. 10,00,000/- ( Rupees Ten lakhs ). The penalty of Rs. 4,50,000/- ( Rupees Four lacs Fifty thousand ) imposed under section 112(a) of the Customs Act,1962, is upheld.

11. 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. Smt. Fathimath Raseena Mohammed  
C/o 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.