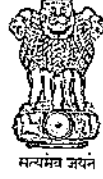


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

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F.No 380/103/B/WZ/2018-RA/~~1049~~ 049 Date of Issue 24.02.2022

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ORDER NO. 100/2022-CUS (WZ)/ASRA/MUMBAI DATED 24.02.2022  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT,  
1962.

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File No. : 380/103/B/WZ/2018-RA

Applicant : Pr. Commissioner of Customs, CSI Airport, Mumbai.

Respondent : Moideen Abdulla Kunhi.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-65882018-19 dated 29.10.2018  
(DOI : 02.11.2018) [A.File No. S/49-781/2017/AP] passed by  
the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by the Pr. Commissioner of Customs, CSI Airport, Mumbai (hereinafter referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-658/2018-19 dated 29.10.2018 (DOI : 02.11.2018) [A. File No. S/49-781/2017/AP] passed by the Commissioner of Customs (Appeals), Mumbai - III in r/o. and Shri. Moideen Abdulla Kunhi (hereinafter referred to as the Respondent).

2. Brief facts of the case are that the respondent who had arrived at the CSI Airport, Mumbai on 05.10.2016 from Riyadh via Bahrain was intercepted by Customs Officers at the exit gate after having cleared himself through the green channel. During the personal search of the Respondent, 4 gold bars of 999.9 purity, each weighing 116 gms and totally weighing 464 grams and valued at Rs. 13,45,461/- were recovered. The 4 gold bars had been wrapped in black coloured cello tape and again wrapped in black coloured carbon paper and had been concealed inside the sole of the shoes worn by the respondent which was required to be cut open to recover the said gold. The 4 gold bars were seized under a reasonable belief that an attempt had been made to smuggle the same into India in a clandestine manner and hence were liable for confiscation under the provisions of the Customs Act, 1962.

3. After due investigations and process of the law, the adjudicating authority viz, Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/40/2017 dated 04.10.2017 [SD/INT/AIU/103/2016 AP'D' (S/14-5-137/2016-17 ADJN)] ordered for the confiscation of the 4 nos of gold bars, totally weighing 464 grams and valued at Rs. 13,45,461/- under Section 111(d), (l) and (m) of the Customs Act, 1962. However, an option to redeem the said gold bars on payment of a redemption fine of Rs. 2,60,000/- under Section 125(1) of the Customs Act, 1962 was given to the Respondent. Further, a penalty of Rs.

1,40,000/- was imposed on the respondent under Section 112 (a) & (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant filed an appeal before the appellate authority viz Commissioner of Customs (Appeals), Mumbai – III who vide his Order-In-Appeal No. MUM-CUSTOM-PAX-APP-658/2018-19 dated 29.10.2018 (DOI : 02.11.2018) [A.File No. S/49-781/2017/AP] upheld the order passed by the original adjudicating authority.

5. Aggrieved with the above order, the Applicant has filed this revision application on the following grounds;

5.1. that the respondent had not made a true and correct declaration of the goods imported by him as required under Section 77 of the Customs Act, 1962 and had opted to clear himself through the green channel which was meant for passengers carrying goods within the free allowance limit under the Baggage Rules, 1998. The same cannot be treated as bonafide baggage.

5.2. that the seized gold bars had been concealed in the soles of the shoes which had to be cut open to recover the impugned gold. The manner of recovery of the gold indicates the concealment was not only ingenious but also premeditated and deliberate with intention to evade Customs duty.

5.3. that such acts of misusing the liberalized facilitation process should be meted out with exemplary punishment which would act as a deterrent.

5.4. that the order passed by the appellate authority was bad in law.

Applicant has prayed that the Order-In-Appeal passed by the appellate authority may be set aside or pass such order as deemed fit.

6. Personal hearing in the case was scheduled for 03.09.2019. Subsequent, to change of the revisionary authority, personal hearings in the case through the online video conferencing mode was scheduled for 22.10.2021 / 29.10.2021, 02.12.2021 / 08.12.2021, 16.12.2021. Records indicate that Smt. Pushpa Anchan, Superintendent had appeared on 06.09.2019 on behalf of the applicant. Shr. N.J Heera, Advocate appeared on behalf of the Respondent for physical hearing on

16.12.2021. He furnished a written submission and contended that quantity of gold is small, applicant is not habitual offender, original as well as appellate authority had allowed redemption. He requested to maintain the order of the Commissioner (Appeals).

6.1. In their written application submitted on 16.12.2021, they have stated that the submission made by the applicant in the revision application filed, is a repetition and all this has already been dealt with and discussed by the adjudicating authority and appellate authority.

6.2. that the contentions of the applicant with regard to declaration under Section 77 of the Customs Act, 1962 had already been explained before the adjudicating authority and the charges leveled in the SCN had been denied and all these contentions have been dealt with by the adjudicating authority and appellate authority had also accepted the same.

6.3. that the respondent is an NRI and had returned back to India after staying abroad for more than six months, purchased gold from his own savings, produced the copy of purchase invoice before the Customs authorities which had been clearly mentioned by the department in their Revision Application and based on this the appellate authority had rejected the appeal filed by the department.

6.4. the respondent has cited a bunch of case laws to buttress their case.

(i). Birla Corporation Ltd. v/s. Commissioner of C.Ex, [2005 (186) ELT 266 (SC)] *when question arising for consideration and facts are identical to previous case, revenue cannot be allowed to take a different stand.,*

(ii). Commr. Of C. Ex , Nasik vs. Jain Vanguard Polybutlene Ltd [2005 (1861) ELT 266(SC)], *held that revenue cannot be allowed to take a different view when question raised identical to previous case – High Court in present case cannot take a view different from that of Karnataka High Court.,*

(iii). Nirma Ltd vs. Commr. Of C.Ex, Nashik, [2012 (276) ELT 283 (Tri-Ahmd)], *on judicial discipline*

(iv). etc

7. Government notes that the applicant had been intercepted at the exit gate while going out of the baggage hall after passing through Customs clearance and had not declared any dutiable goods in his possession. Thereafter, he was subjected to a detailed examination which resulted in the detection of the impugned gold. As the aforesaid goods had not been declared to the Customs, the Government notes that the confiscation of the impugned gold was justified.

8. The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia vs. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that “ *if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. .... Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods.*” It is thus clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, “prohibited goods”.

9(a). At the outset, Government notes that the original adjudicating authority while allowing the redemption of the impugned gold had considered that by virtue of the the applicant having stayed abroad for a period exceeding 6 months, he was eligible to import gold at concessional duty. Also, the original adjudicating authority had observed that the applicant was an Indian citizen; that he had claimed ownership of the gold; that the quantity of gold was within permissible limit for eligible passengers as per the notification; that applicant was not a habitual offender nor a professional carrier carrying gold for somebody else; that

he was not a frequent traveller; that from the call records of the applicant nothing incriminating had been found. From the aforesaid observations of the original adjudicating authority, Government finds that the applicant by virtue of his stay abroad exceeding a period of six months was an eligible person permitted to import gold and Government observes that gold brought by such eligible persons is not prohibited provided that payment of the concessional duty is made through foreign currency. Contention, if any, that currency was not sufficient to meet requirement of duty payment, will not alter the eligibility based on period of stay abroad, as currency can be arranged subsequently to pay applicable duty for claiming of goods.

9(b). Moreover, the quantum of gold under import is small. The impugned 4 gold bars had been concealed inside the sole of the shoes and which had to be cut open to retrieve the same. Government observes that sometimes passengers resort to such methods to keep their valuables / precious possessions safe. There are no allegations that the applicant is a habitual offender and was involved in similar offence earlier. The facts of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of the Customs Act, 1962 and while deciding quantum of penalty to be imposed. From the facts on the records, Government finds that the order passed by the original adjudicating authority is legal and proper and has been rightly upheld by the appellate authority. Government finds no reason to interfere in the same.

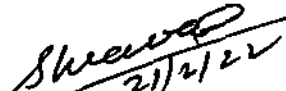
10. Government finds that the quantum of the redemption fine of Rs. 2,60,000/- imposed on the applicant is nearly 20% of the value of the gold and has been upheld by the appellate authority, and the same being reasonable, Government does not find it necessary to interfere in the same.

11. The Government notes that the penalty of Rs. 1,40,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962 is appropriate

and commensurate with the omission and commission committed by the applicant.

12. The Government finds that order passed by the lower authorities is judicious, legal and proper and does not find it necessary to interfere in the same. The revision application filed by the applicant fails.

13. Accordingly, the revision application filed by the applicant is dismissed.

  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 100/2022-CUS (WZ) /ASRA/ DATED 21.02.2022

To,

1. Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal - 2, Mumbai - 400 099.
2. Shri. Moideen Abdulla Kunhi, S/o. Mr. Moideen Kunhi, Balakinadukka House, Barkath Manzil, Post Maire, via Peria, Kasargod District, Kerala.

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