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F.No. 380/41/B/WZ/2018-RA

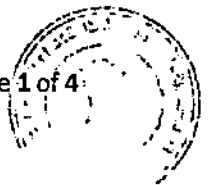
Date of Issue 11/12/18

ORDER NO. 1010/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 30.11.2018
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR
MEHTA, 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 Rahamatullah Panch Beer

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-04/18-19 dated 11.04.2018
passed by the Commissioner of Customs (Appeals),
Mumbai-III.



ORDER

This revision application has been filed by Commissioner of Customs, Mumbai (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-04/18-19 dated 11.04.2018 passed by the Commissioner of Customs (Appeals, Chennai).

2. Briefly stated the facts of the case is that the Respondent, arrived at the CSI Airport on 02/03.08.2014. He was intercepted as he was attempting to cross the green channel, and examination of his baggage and person resulted in the recovery of two circular blocks of gold and one gold rod weighing 947 grams and valued at Rs. 24,20,030/- (Rupees Twenty four lakhs Twenty thousand and thirty). The gold blocks were concealed in the Hot plate and the gold rod was concealed in the printer cartridge brought by the Respondent.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/254/2015-16 dated 31.12.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (1) (m) of the Customs Act, 1962, and imposed penalty of Rs. 2,50,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the respondent filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-04/18-19 dated 11.04.2018 allowed redemption of the gold on payment of redemption fine of Rs. 4,50,000/-and applicable duty and allowed the appeal of the respondent, without interference in the penalty imposed.

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

5.1 The respondent knowingly opted for the green channel and did not declare the gold as required contravened the section 77 of the Customs Act, 1962 and has therefore contravened the provisions of the Customs Act, 1962 and has rendered the gold prohibited; The gold was ingeniously concealed in the Hot plate and printer cartridge, If not detected the respondent would have walked away without payment of duty; In his statement he has admitted to concealing the gold to avoid the payment of Customs duty; The order of the Commissioner (Appeals) in granting redemption and re-export overlooks the fact that the concealment showed



the Applicant criminal bent of mind; The order in original does not suffer from any vice and therefore should not have allowed redemption; In the instant case the goods which have been confiscated were being smuggled ingeniously and the Commissioner (Appeals) has not considered these facts these facts and therefore the the order in Appeal permitting the smuggled gold to be redeemed is not proper.

5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority or any such order as deemed fit.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled on 27.08.2018, 17.09.2018 and 18.09.2018, Shri R Kulkarni Superintendent attended the said hearing and reiterated the submissions in the Revision application and pleaded that the Order in Appeal be set aside. The Personal hearing was again scheduled on 26.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided ~~ex parte~~ ^{ex parte} on merits.

7. The Government has gone through the case records it is observed that the gold was ingeniously concealed in the Hot plate and printer cartridge brought by the Respondent. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration. In this case the Respondent has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The release of the gold cannot be entertained as the Respondent has not declared the gold as required under Section 77 of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Respondent had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Respondent would have taken out the gold without payment of customs 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 a 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-04/18-19 dated 11.04.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III is set aside. The order of the Original Adjudicating authority is therefore upheld as legal and proper.

10. Revision application is accordingly allowed on terms mentioned supra.

11. So, ordered.

(Handwritten Signature)
30.11.18

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

ORDER No. ¹⁰¹⁰/2018-CUS (WZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

1. The Commissioner of Customs, (CSI Airport),
Sahar, Mumbai-400 009.
2. Shri Rahamatullah Panch Beer
No. 143/B-I, Nathaji Nagar,
3rd Street, Tondiarpet,
Chennai – 600 081.



ATTESTED

(Handwritten Signature)
11.12.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

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