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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. 380/41/B/2019 / 4357

Date of Issue 15/10/2019

ORDER NO. 17 /2019-CUS (WZ)/ASRA/MUMBAI DATED 30 .09.2019 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, CSI Airport, Mumbai

Respondent : Shri Abdul Moosa

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-02/2019-20 dated 22.04.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by the Commissioner of Customs, CSI, Mumbai. (herein referred to as Applicant) against the order MUM-CUSTOM-PAX-APP-02/2019-20 dated 23.04.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 09.08.2018 the Applicant arrived at the CSI, Mumbai Airport, he was intercepted as he was walking through the Green Channel. Examination of his baggage resulted in the recovery of 20 cartons of Gudang Gurang Cigarettes valued at Rs. 30,000/- (Rupees Thirty thousand) and a gold sheet carefully concealed in a thermos flask weighing 260 gms and valued at Rs. 7,09,397/- (Rupees Seven lacs Nine thousand Three hundred and Ninety seven). The cigarettes did not have the mandatory warning.
3. After due process of the law vide Order-In-Original No. AIRCUS/49/T2/353/2018/BATCH-C Dt. 09.08.2018 the Original Adjudicating Authority ordered absolute confiscation of the gold and cigarettes under Section 111 (d) of the Customs Act, 1962 and imposed penalty of Rs. 1,25,000/- on the Applicant under Section 112 (a) of the Customs Act, 1962 on the Applicant.
4. Aggrieved by this order the respondent filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) holding the the passenger is not a habitual offender or professional smuggler, vide his order No. MUM-CUSTOM-PAX-APP-02/2019-20 dated 22.04.2019 allowed the gold to be redeemed on payment of Rs. 1,50,000/- (Rupees One lac Fifty thousand) as redemption fine and reduced the penalty to Rs. 75,000/- (Rupees Seventy Five thousand) and allowed the appeal of the Respondents.
5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 The respondent during the personal hearing admitted to have carried the gold concealed in a thermos flask; The Passenger had tried to clear the impugned gold without making a declaration as required under section 77 of the Customs Act, 1962; not an eligible passenger to import gold as per 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; 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; The recovered gold was concealed in a thermos flask, 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 passenger had concealed the gold with the express intention of evading duty and they are also not an eligible to import gold; Releasing the gold on redemption fine under section 125 of the Customs Act,1962 depends on the facts and circumstances of the case and is not binding as a precedent.

5.2 The Revision Applicant cited case laws in support of thier contention and prayed that the impugned Order in Appeal be set aside and the order in original be upheld and /or 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 gold has been disposed. In his written submissions it was interalia submitted that release of the confiscated goods on payment of fine and penalty is such category, which cannot be considered as loss of revenue to the exchequer. Gold is not a prohibited item for import. Therefore absolute confiscation is not warranted in this case. There are series of judgements wherein redemption of absolutely confiscated gold has been allowed and requested that the concerns of consistency provide justification for treating earlier decisions as sources of law, rather than approaching each question anew when it arises again. Case laws in favour of the respondents case were also submitted.

7. The Government has gone through the case records. It is observed that the respondent did not declare the gold and it was ingeniously concealed in a thermos flask. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. The Respondent was using the facility of the green channel and therefore had no intention to declare the goods as mandated 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 if he was not intercepted before the exit, the Applicant would have taken out the gold without payment of customs duty in contravention of the provisions of the Customs, Act 1962. The Gudang Gurang cigarettes

also did not have the mandatory warning. Under the circumstances absolute confiscation of the gold and cigarettes is fully justified.

8. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the cigarettes and gold absolutely and imposed penalty. The above acts have therefore also rendered the Respondents liable for penal action under section 112 (a) of the Customs Act, 1962. 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-02/2019-20 dated 22.04.2019 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. 17/2019-CUS (WZ) /ASRA/

DATED 30-09-2019

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.