



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

F.No. 380/04/B/WZ/2019 | 4362

Date of Issue 15/10/2019

ORDER NO. 18/2019-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 : Pr. Commissioner of Customs, CSI Airport, Mumbai

Respondent : Shri Aboobakkar Konkanapadav

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-706/18-19 dated 09.11.2018 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-CUSTM-PAX-APP-706/18-19 dated 09.11.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Aboobakkar Konkanapadav Indian citizen at the CSI Airport, Mumbai on 07.12.2017 after he had cleared himself from at the green channel as the baggage screening machine showed some incriminating items. Examination of his baggage and person resulted in recovery of 2 (two) gold bars totally weighing 233 grams valued at Rs. 6,37,036/- (Rupees Six Lakhs Thirty seven thousand and thirty six). The gold was ingeniously concealed in the upper part of the battery space in an emergency light.

3. After due process of the law vide Order-In-Original No. ADC/AK/ADJN/51/2018-19 dated 11.05.2018 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 65,000/- (Rupees Sixty five thousand) under Section 112 (a) and (b) of the Customs Act,1962.

4. Aggrieved by this order the respondent filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. MUM-CUSTM-PAX-APP-706/19-20 dated 09.11.2018 allowed the gold to be redeemed for re-export on payment of Rs. 1,00,000/- (Rupees One lac)as redemption fine and upheld the penalty of Rs. 65,000/- already imposed and partially allowed the appeal of the Respondents.

5. Aggrieved with the above order the Applicant department has filed this revision application interalia 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; 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 ingeniously concealed in the upper part of the battery space in an emergency light., 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 redemption fine and penalty depends on the facts and circumstances of the case and other cases and cannot be binding as a precedent; The passengers 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 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 the upper part of the battery space in an emergency light. The Respondents had concealed the gold deliberately so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a mere case of mis-declaration. The Respondents has blatantly attempted to smuggle the gold into India in contravention of the provisions of the Customs, Act 1962 by concealing the gold in such a manner so as to hoodwink the Customs Officers. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had willfully hidden the gold ingeniously and if he was not intercepted before the exit, the gold would have been taken out without payment of customs duty.

8. 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-706/2018-19 dated 09.11.2018 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. 18/2019-CUS (WZ) /ASRA/

DATED 3-09.2019

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Aboobakkar Konkanapadav
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.