

REGISTERED
SPEED POST



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

F.No. 380/83/B/WZ/2018-RA / 4396

Date of Issue 15/10/19

ORDER NO 25/2019-CUS (SZ) / ASRA / MUMBAI/ DATED 30.9.2019 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 : Commissioner of Customs (Airport) Mumbai.

Respondent : Shri Adnan Khomoshi & Smt. Alefiya Mulla Fakhruddin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-114/18-19 Dated 23.05.2018 passed by the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

This revision application has been filed by Commissioner of Customs (Airport), Mumbai, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-114/18-19 Dated 23.05.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 06.10.2014 the Officers of Customs intercepted the Respondent after he had opted the green channel. Examination of their baggage and person resulted in the recovery of 4 (four) silver coloured gold wires and 4 (four) silver coloured gold wheel parts totally weighing 1164 gms valued at Rs. 28,71,681/- (Rupees Twenty eight lacs Seventy one thousand six hundred and Eighty one). The gold wire was ingeniously concealed in the outer lining and the wheel parts in the wheels of their baggage.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/032/2016-17 dated 26.04.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d), (l), (m) of the Customs Act 1962 and imposed penalty of Rs. 2,75,000/- (Rupees Two lacs and Seventy five thousand) under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-114/18-19 Dated 23.05.2018 set aside the absolute confiscation and allowed the gold for redemption on payment of redemption fine of Rs. 5,25,000/- (Rupees Five Lacs Twenty Five thousand) and upheld the penalty imposed by the lower authority.

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

5.1 The Respondent passengers attempted to smuggle the 4 (four) silver coloured gold wires and 4 (four) silver coloured gold wheel parts totally weighing 1164 gms valued at Rs. 28,71,681/- (Rupees Twenty eight lacs Seventy one thousand six hundred and Eighty one) and have admitted to possession, non-declaration concealment; the passengers had not declared the gold jewellery as required

under section 77 of the Customs Act,1962 and opted to clear himself through the green channel, thereby rendering the goods as prohibited and liable for confiscation; The seized gold was ingeniously concealed in the outer line of the zipper of the baggage and the wheels of the baggage; The detection was not possible by routine methods of examination and therefore merits absolute confiscation; The redemption fine and penalty depends on the facts and circumstances of the case and cannot be binding as a precedent; In the present case manner of concealment is ingenious and it weighed with the adjudicating authority to order absolute confiscation; As per the statement of the Respondents he is only a carrier, ie professional smuggler smuggling gold on behalf of others for consideration.

5.2 The Revision Applicant prayed for setting aside the order of the Appellate authority or any other order as deemed fit and proper.

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 facts of the case. The gold was gold was ingeniously concealed in the outer line of the zipper of the baggage and the wheels of the baggage, the manner of concealment indicates the ingenious nature of its concealment. The respondent was intercepted after they had cleared the green channel. The Appellate authority in its order, has extensively dwelt on exercising the discretionary powers of section 125 of the Customs Act,1962 and discussed case laws in its favour. The Government views however, are not congruent with the said assertions. A proper written declaration of the impugned gold was not made by the Respondent as required under Section 77 of the Customs Act, 1962 and he preferred to use the facility of the green channel inspite of having dutiable goods. The manner of concealment clearly indicates that there was a blatant attempt to avoid its detection by the Customs authorities and smuggle the gold into India clandestinely. The facts of the case make it clear that

the respondent actions were to conceal the gold and if they were not intercepted they would have escaped the payment of 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 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-114/18-19 Dated 23.05.2018 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. 25/2019-CUS (WZ) /ASRA/

DATED 30-09-2019

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Adnan Khomoshi & Smt. Alefiya Mulla Fakhruddin
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.