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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. 380/34/B/WZ/2019 / 4374

Date of Issue 15/10/2019

ORDER NO.26/2019-CUS (WZ) / ASRA / MUMBAI/ DATED 30.09.2019 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 : Principal Commissioner of Customs (Airport), Mumbai.

Respondent : Shri Mohammed Naveed Musba

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1261/18-19 Dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai – III.

ORDER

This revision application has been filed by Principal Commissioner of Customs (Airport), Mumbai, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-1261/18-19 Dated 29.03.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 06.04.2018 the Officers of Customs intercepted the Respondent after he had opted the green channel and diverted the Respondent to the red channel for detailed examination of his baggage. Examination of his person resulted in the recovery of one silver coloured band and one silver coloured belt buckle of crude gold totally weighing 276 gms valued at Rs. 7,85,739/- (Rupees Seven lacs Eighty Five thousand seven hundred and thirty nine).

3. After due process of the law vide Order-In-Original No. ADC/AK/ADJN/64/2018-19 dated 16.05.2018 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. 80,000/- (Rupees Eighty 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-1261/18-19 Dated 29.03.2019 set aside the absolute confiscation and allowed the gold on payment of redemption fine of Rs. 1,50,000/- (Rupees One Lac Fifty 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 passenger attempted to smuggle the one silver colored band and a silver coloured belt buckle of crude gold. The seized gold buckle cannot be treated as bonafide baggage in terms of 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; The recovered gold was silver coloured in the form of a band and a belt buckle, 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; It was a conscious effort by the passenger to conceal both the nature of the goods and the goods themselves and therefore it falls under the ambit of ingenious concealment. The resort to section 125 of the Customs Act, 1962 to impose fine in lieu of confiscation cannot be exercised to give a bonanza for an illegal transaction of import.;

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 in the form of a silver colored band and a silver coloured belt buckle of crude gold, the manner of concealment indicates the ingenious nature of its concealment. The respondent was intercepted after he 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

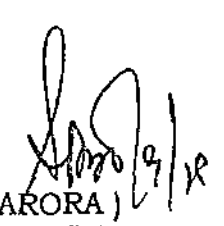
dutiable goods. The manner of concealment ie converting the gold into a belt buckle, and colouring it to give the impression of it being silver clearly indicates that there was a blatant attempt to avoid its detection by the Customs authorities and smuggle the gold into India clandestinely. The facts of the case make it clear that the respondent actions were to conceal the gold and if he was not intercepted he 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-1261/18-19 Dated 29.03.2019 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 26/2019-CUS (WZ) /ASRA/

DATED 30.09.2019

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Mohammed Naveed Musba
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.