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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. 380/07/B/2019/4832

Date of Issue . 4.11.19

ORDER NO. 27/2019-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 Muhamad Kalandarsha Periyadukka Abdulla

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-708/2018-19 dated 09.11.2019 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by the Pr. Commissioner of Customs, CSI, Mumbai. (herein referred to as Applicant) against the order MUM-CUSTM-PAX-APP-708/2018-19 dated 09.11.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that on the basis of intelligence the Officers of Customs followed a passenger to the Mens washroom and noticed the passenger surreptitiously pass a package to a person named Shri Aniket Oroskar, a technician with IDDS Pvt. Ltd., at CSI, Mumbai. The passenger, Shri Muhamad Kalandarsha Periyadukka Abdulla was intercepted alongwith Shri Aniket Oroskar and their examination resulted in recovery of 16 gold bars totally weighing 1860 grams valued at Rs. 45,10,500/- (Rupees Forty five lacs Lakhs Ten thousand Five hundred). Shri Muhamad Kalandarsha Periyadukka Abdulla revealed that the gold was given to him by one Shri Hasif in Dubai, with instructions to contact Shri Ashraf after landing in Mumbai. Shri Ashraf directed Shri Muhamad Kalandarsha Periyadukka Abdulla to hand over the gold to Shri Aniket Oroskar waiting in the Mens washroom. Further, a search conducted in the premises of Shri Aniket Oroskar resulted in the recovery of Rs. 4,00,000/- (Rupees Four lacs), this amount was also seized by the officers as remuneration received by him for the services offered by him for taking the gold out of the airport.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/210/2016-17 dated 29.07.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold and the currency under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 5,00,000/- (Rupees Five lacs) under Section 112 (a) and (b) of the Customs Act, 1962 each on both Shri Muhamad Kalandarsha Periyadukka Abdulla and Shri Aniket Oroskar.

4. Aggrieved by this order the respondent, Shri Muhamad Kalandarsha Periyadukka Abdulla filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. MUM-CUSTM-PAX-APP-708/2018-19 dated 9.11.2019 allowed the gold to be redeemed for re-export on payment of Rs. 11,00,000/- (Rupees Eleven lacs) as redemption fine and upheld the penalty of 5,00,000/- (Rupees Five lacs) already imposed and partially allowed the appeal of the Respondents.

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

5.1 It is not in dispute that the gold was brought by the passenger who is not eligible to import gold; There was an attempt to smuggle the gold into India; He had failed in making a declaration as required under section 77 of the Customs Act, 1962, 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; The Passenger at the time of seizure did not have any money to pay duty neither he at any time explained how he intended to pay the duty; It is clearly established that there was an attempt to smuggle the gold into India;

5.2 The Revision Applicant cited case laws in support of their 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 29.08.2019. 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 released.

7. The Government has gone through the case records. It is observed that the respondent did not declare the gold and it was surreptitiously handed over to a person in the Mens washroom to be smuggled into India and avoid the payment of duty. The entire operation was planned so as to avoid detection and evade Customs duty. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India using the help of personnel having access to the airport. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, The Applicant had no intention of declaring the gold to the authorities and if he was not intercepted along with Shri Aniket Oroskar, the Applicant would have taken out the gold without payment of customs duty. It is clearly established that this was an elaborate plan to smuggle the gold into India in contravention of the provisions of the Customs, Act 1962. At the time of seizure the Passenger did not have any money to pay duty neither did he at any time explain how he intended to pay the duty. The facts of the case reveal that the respondent as well as Shri Aniket Oroskar have been involved in smuggling gold earlier, and have succeeded a number of times. Under the circumstances absolute confiscation of the gold is fully justified.

8. The above acts have therefore rendered the impugned gold liable for absolute confiscation and the Respondent and his accomplice liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original

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-708/2018-19 dated 09.11.2019 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. 27/2019-CUS (WZ) /ASRA/

DATED 30-09-2019

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Muhamad Kalandarsha Periyadukka Abdulla
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.