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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. 380/05/B/WZ/2019 / 5211

Date of Issue 11.12.19

ORDER NO. 31/2019-CUS (WZ) / ASRA / MUMBAI / DATED 28.10.2019 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 Ziyadh

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-707/18-19 Dated 09.11.2018 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-707/18-19 Dated 09.11.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 08.04.2018 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 baggage and person resulted in the recovery of two gold bars ingeniously concealed in the two electronic control gears for Xenon light bulb. One gold bar was recovered from his wallet. The three gold bars totally weighed 349 gms valued at Rs. 9,93,561/- (Rupees Nine lacs Ninety three thousand Five hundred and Sixty one).

3. After due process of the law vide Order-In-Original No. ADC/AK/AD/JN/61/2018-19 dated 15.05.2018 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. 1,00,000/- (Rupees One lac) 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-707/18-19 Dated 09.11.2019 set aside the absolute confiscation and allowed redemption on payment of redemption fine of Rs. 1,75,000/- (Rupees One Lac Seventy Five thousand) alongwith applicable duty and other charges 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 three gold bars. The seized gold bars 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 ingeniously concealed in two electronic control gears for Xenon light bulbs, 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. 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 in spite of having dutiable goods therefore, the confiscation of the gold is justified. Government however observes that all the gold bars were not concealed ingeniously and the quantity involved in the transaction is not very large. The Government agrees with the contention of the Commissioner (Appeals) that the purpose of redemption fine is to wipe out the margin of profit. The Appellate order has imposed a redemption fine of Rs. 1,75,000/- and a personal penalty of Rs. 1,00,000/-, and including applicable duty and other charges the Applicant has to pay almost 65% of the value of the goods. The Government therefore holds that the Appellate authority has rightly allowed the release of the gold on sufficient redemption fine and imposed penalty. The impugned Revision Application is therefore liable to be rejected and the order of the Appellate authority is liable to be upheld.

9. Accordingly, the impugned Order in Appeal No. MUM-CUSTOM-PAX-APP-707/18-19 Dated 09.11.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III is 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. 31 /2019-CUS (WZ) /ASRA/

DATED 28.10.2019

To,

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