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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. 380/2-A/B/2017-RA/5552

Date of Issue 22.11.19

ORDER NO. 33/2019 CUS (WZ)/ASRA/MUMBAI DATED 22.10.2019 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 : Commissioner of Customs, CSI Airport, Mumbai

Respondent : Shri Macchiwala Nasir Mahmood

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-472/16-17-dated 27.12.2017 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-472/16-17 dated 27.12.2017 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that based on suspicion the Officers of Customs intercepted Shri Machiwala Nasir Mahmood at the CSI Airport, Mumbai on 27.10.2014 after clearing himself from customs at the green channel. During the course of a personal search the officers noticed that the metal detector sounded a beep when he passed through it. The shoes worn by the respondent were found to be unusually heavy and when inspected it resulted in recovery of 11 gold bars totally weighing 1216 grams valued at Rs. 30,25,658/- (Rupees Thirty lacs Twenty five thousand six hundred and fifty eight). The gold was ingeniously concealed in the shoes worn by the Respondent.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/175/2016-17 dated 18.07.2016 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. 3,00,000/- (Rupees Three lacs) 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-472/16-17 dated 27.12.2016 allowed the gold to be redeemed for re-export on payment of Rs. 5,50,000/- (Rupees Five lacs Fifty thousand)as redemption fine, upheld the penalty 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 failed to make a declaration as required under section 77 of the Customs Act,1962; The Respondent opted for the green channel whereas he was supposed to go through the red channel; The

passenger admitted that the gold was concealed in his shoes to make some profit so as to use the same for his treatment of heart disease; The gold was purchased from his own savings; The Commissioner (Appeals) has erred in release of the gold bars on redemption fine and penalty; the option to release the gold under section 125 of the Customs Act, 1962 is the discretionary power of the adjudication authority depending on the facts and merits of the case; Taking into consideration the facts that the gold was ingeniously concealed the Order in original had rightly ordered absolute confiscation; The redemption fine and penalty depends on the facts and circumstances of the case and cannot be binding as a precedent; The gold was concealed in the shoes worn by the applicant and this falls in the ambit of ingenious concealment.

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, personal hearings in the case were scheduled on 22.10.2018, 19/20.11.2018 and was held on 01.10.2019. Smt. Anu Agarwal, Deputy Commissioner, CSI, Mumbai, attended the hearing and reiterated the submissions and sought absolute confiscation as there was a obvious attempt to smuggle the gold. Nobody attended the hearing on behalf of the Respondent.

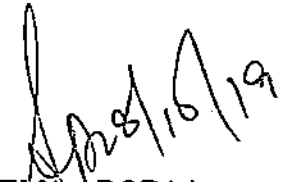
7. The Government has gone through the case records. It is observed that the respondent did not declare the gold bars and it was ingeniously concealed in the shoes worn by him. The Respondent had concealed the gold deliberately so as to avoid detection and evade Customs duty and smuggle the gold into India. The gold was concealed in a blatant attempt to get past the Customs Officers and avoid duty payment. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and if he was not intercepted before the exit, the gold would have been taken out without payment of customs duty.

8. The above acts have therefore rendered the gold for absolute confiscation and 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-CUSTOMS-PAX-APP-472-16-17 dated 27.12.2016 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. 33/2019-CUS (WZ) /ASRA/

DATED 28/10/2019

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Macchiwala Nasir Mahmood, Maddas House, Maqdummya Mohalla, Post
Murdeswar, Karnataka- 581350.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.