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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No.380/80/B/WZ/18-RA

Date of Issue 31.07.2020

ORDER NO. 35/2020-CUS (WZ)/ASRA/MUMBAI DATED 05.05.2020 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 : Pr. Commissioner of Customs, Mumbai.

Respondent: Shri Ahmed Hunaise Kadappuram Mamoo

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-97/18-19 dated 16.05.2018 passed by the Commissioner of Customs (Appeals), Mumbai.



ORDER

This revision application has been filed by Shri Ahmed Hunaise Kadappuram Mamoo (herein referred to as Applicant) against the order No. MUM-CUSTM-PAX-APP-97/18-19 dated 16.05.2018 passed by the Commissioner of Customs (Appeals), Mumbai.

2. Briefly stated the facts of the case are that on the basis of intelligence the Respondent, who had arrived from Dubai on 12.01.2016 was intercepted after he had cleared the Green Channel. The detailed examination of a cardboard box brought as checked in baggage resulted in the recovery of 5 nos of gold bars totally weighing 695 grams totally valued at Rs. 16,17,252/- ( Rupees Sixteen Lakhs Seventeen thousand Two hundred and Fifty two ). The gold bars were ingeniously concealed in the two water taps recovered from the checked in baggage of the Applicant.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/507/2016-17 dated 15.02.2017 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 1,60,000/- ( Rupees One lac Sixty thousand) 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-97/18-19 dated 16.05.2018 set aside absolute confiscation and allowed redemption of the gold on payment of redemption fine of Rs. 3,00,000/- ( Rupees three lacs ) and upheld the penalty imposed.

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

5.1 5.1 The Passenger had failed to make a declaration as required under section 77 of the Customs Act, 1962; The Respondent his statement recorded on 12.01.2016 stated that the gold was concealed to evade customs duty as he thought that the same would be detected ; The passenger admitted that the gold was given to



him by one Mr. Jaffer; The Original adjudicating Authority has specifically observed that the gold was concealed in water taps and recovered with much efforts and the manner of concealment was extremely deceptive and ingenious. The Respondent was merely a carrier and the gold did not belong to him; The circumstances of the case and the intention of the respondent was not considered by the Commissioner( Appeals); 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 the manner of concealment was ingenious and it had weighed with the adjudicating authority to order absolute confiscation; The order in original does not suffer from any vice and therefore the Commissioner ( Appeals ) should not have allowed redemption; The Commissioner ( Appeals) has also erred in accepting the retracted confessional statement of the Respondent as it was admissible in evidence against him.

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. Personal hearings in the case were scheduled on 28.11.2019. The advocate for the Applicant Shri Prakash Shingrani appeared for hearing on behalf of the Respondent in his written reply interalia stated that;

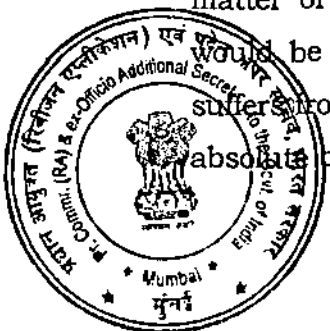
6.1 Release of confiscated goods on payment of fine and penalty is such category, which cannot be considered as loss of revenue to the exchequer. If at all it is considered as a loss to the Government exchequer (as claimed by the learned Appellant Commissioner of Customs) then there would not be a provision under the Customs Act, 1962 i.e section 125 for release of the confiscated good on payment of fine.; The redemption fine of 18.55% imposed by the commissioner (Appeals) and penalty of Rs 1,60,000/- for release of the gold, the percentage of redemption fine and penalty works out to 28.45% and the total liability of the respondent works out to 64.350% (including the duty @ baggage rate of 36.05%); In view of these facts, the decision of the Appellate authority is justified because it entirely wiped out not



only the margin of profit but also acted as a strong deterrent against repeat offences.; Mr Ahmed Hunaise Kadappuram Mamoo does not fall in the category of a habitual smuggler.; Gold is not a prohibited item for import, it is only restricted and therefore absolute confiscation is not warranted in the case; no other person claimed ownership of the gold and there is nothing on record to suggest that he is a professional smuggler; Section 125 of the Customs Act,1962 provides that in case of prohibited goods the adjudicating authority may give option for redemption, however for other than non prohibited goods the adjudicating authority has to give an option to pay fine in lieu of confiscation.

6.2 The Advocate for the respondent relied on various case laws in favour and in view of the above submissions submitted that there is no merit in the Revision Application and the gold may be released to the Respondent on payment of redemption fine and penalty.

7. The Government has gone through the facts of the case. It is on record that the gold was not declared as mandated under section 77 of the Customs Act, 1962. The baggage of the Applicant was subjected to a search and thereafter the gold was recovered. The gold was ingeniously concealed in the water taps carried by the Respondent and it was recovered from the checked in baggage of the Applicant. The manner of concealment is extremely deceptive and ingenious and clearly indicates an attempt to smuggle the gold. The attempt also indicates mensrea and an absolute contempt of the law. Had the Applicant department not received intelligence in respect of the hidden gold and the Respondent not been intercepted before the exit, the gold would have been taken out without payment of customs duty. These aspects have weighed on the original adjudicating authority to confiscate the gold absolutely. The Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi[2003 (155) ELT 423 (SC)] states that in the matter of quasi-judicial discretion, interference by the Appellate Authority would be justified only if the lower authority's decision was illogical or suffered from procedural impropriety. The impugned gold is therefore liable for absolute confiscation and the Applicant 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 Appellate Order is therefore liable to be set aside.

9. Accordingly, the impugned Order in Appeal No. MUM-CUSTOM-PAX-APP-97/18-19 dated 16.05.2018 passed by the Commissioner of Customs (Appeals), Mumbai is set aside. The order of the Original adjudicating authority is upheld.

10. Revision application is disposed of on above terms.

11. So, ordered.

( SEEMA ARORA )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. <sup>35</sup>/2019-CUS (WZ) /ASRA/MUMBAI DATED 05/05/2020

To,

1. The Commissioner of Customs, T-2, C.S.I. Airport, Andheri Mumbai-400 099.
2. Shri Ahmed Hunaise Kadappuram Mamoo, Ashraf Manzil, Kadappuram Korippody Valappu, PO, Kasargod, Kerala 671 121.

Copy to:

3. Shri Prakash Shingrani, Advocate, 12/334 New MIG Colony, Bandra ( E ) Mumbai - 51.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

**ATTESTED**

B. LOKANATHA REDDY  
Deputy Commissioner (R.A.)

