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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. 380/12/B/WZ/2019 / 5761

Date of Issue 11/12/19

ORDER NO. 37/2019-CUS (WZ)/ASRA/MUMBAI DATED 29.10.2019 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 : Pr. Commissioner of Customs, CSF Airport, Mumbai

Respondent : Shri Mohammed Althaf Moidin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-720/18-19 dated 14.11.2018 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-CUSTOM-PAX-APP-720/18-19 dated 14.11.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 11.01.2017 the Officers of Customs intercepted the Respondent when he was proceeding towards the domestic transfer area after he had cleared himself at the green channel. Examination of his baggage and person resulted in the recovery of two packets from in his wallet and one packet, stuck with the battery and concealed in an emergency light in his baggage. Opening of the packets led to the recovery of 6 gold bars from the two packets recovered from his wallet and four gold bars from the packet concealed in the emergency light. The gold totally weighed 1160 gms was valued at Rs. 29,68,858/- (Rupees Twenty Nine lacs Sixty Eight thousand Eight hundred and Fifty eight).

3. After due process of the law vide Order-In-Original No. ADC/AK/ADJN/74/2017-18 dated 26.10.2017 the Original Adjudicating Authority ordered confiscation but allowed redemption of the gold on payment of redemption fine of Rs. 5,50,000/- (Rupees Five lacs Fifty thousand) and applicable rate of Customs duty and other charges and imposed penalty of Rs. 3,50,000/- (Rupees Three lacs Fifty thousand) under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the Department filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-720/18-19 Dated 14.11.2018 upheld the order of the Original Adjudicating Authority.

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

5.1 The Passenger had tried to clear the impugned gold without making a declaration as required under section 77 of the Customs Act, 1962; The seized gold bars cannot be treated as bonafide baggage in terms of the provision of Notification no. 12/2012-Customs dated 17.03.2012 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; It is not in dispute that the gold was brought in a concealed manner and there was an attempt to smuggle the gold into India; The manner of recovery of the gold indicates the concealment was not only ingenious one but also premediated and deliberate act to evade customs duty; The circumstances of the case and the intention of the passenger were not at all considered by the Appellate authority; The Appellate authority has therefore erred in allowing redemption of the gold.

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the impugned Orders be set aside or pass any other order as deemed fit.

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 inspite of having dutiable goods. The gold bars were ingeniously concealed by sticking the same to the battery kept inside an emergency light. The release of these gold bars on redemption fine and penalty cannot be justified. The manner of concealment clearly indicates that there was an 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 these gold bars and if he was not intercepted he would have escaped the payment of duty. These gold bars are therefore liable for absolute confiscation. The intention of the importer was clearly to remove the gold bars without declaration as required under Section 77 of the Customs Act, 1962.

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. Government however observes that of the ten gold bars recovered from the respondent, six gold bars were recovered from the wallet of the respondent and four of the gold bars were ingeniously concealed by sticking the same to the battery kept inside an

emergency light. The manner of concealment clearly indicates that there was an attempt to avoid its detection by the Customs authorities and smuggle the same into India clandestinely. The facts of the case make it clear that the respondent actions were to conceal these gold bars and if he was not intercepted he would have escaped without the payment of duty. These gold bars are therefore liable for absolute confiscation as the intention to evade cannot be distinguished on the basis of where the gold bars were concealed. All the gold bars were not declared and were attempted to be smuggled.

10. The above acts have therefore rendered the Respondent liable for penal action under section 112 (a) of the Customs Act, 1962. The Government sets aside the order of Commissioner (Appeals) and orders absolute confiscation of the gold bars. The penalty imposed is appropriate.

11. Revision application is accordingly allowed.

12. So, ordered.

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

ORDER No. 37 /2019-CUS (WZ) /ASRA/

DATED 23/10/2019

To,

1. The Principal Commissioner of Customs (Airport),  
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Mohammad Althaf Moidin  
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.