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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. 380/69/WZ/2018-RA/24992 Date of Issue 29.02.2020

ORDER NO. 40/2020-CUS (WZ)/ASRA/MUMBAI DATED 08.05.2020 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 Zarar Gulam Khan

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-125/18-19 dated 28.05.2018 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-CUSTOM-PAX-APP-125/18-19 dated 28.05.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

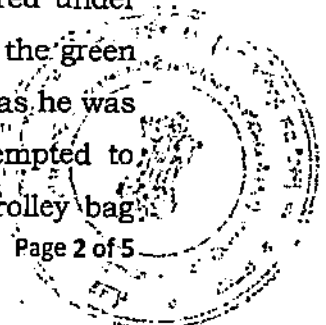
2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Zarar Gulam Khan after he had cleared the green channel at the CSI Airport, Mumbai on 16.03.2014. Screening of his baggage revealed positive signs for presence of some metal in his trolley bag. An examination of the baggage resulted in the recovery of two gold wires totally weighing 810 grams valued at Rs. 22,34,790/- (Rupees Twenty two lacs Thirty Four thousand and Seven hundred and Ninety). The gold was ingeniously concealed as wires in the middle portion around the trolley bag.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/100/2015-16 dated 21.07.2015 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. 2,20,000/- (Rupees Two lacs Twenty 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-CUSTOM-PAX-APP-125/18-19 dated 28.05.2018 allowed the gold to be redeemed on payment of Rs. 4,00,000/- (Rupees Four lacs) as redemption fine and upheld the penalty imposed and 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 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 even though he carried gold weighing 810 grams, whereas he was supposed to go through the red channel; The respondent attempted to smuggle the impugned gold by concealing it as wires in the trolley bag;

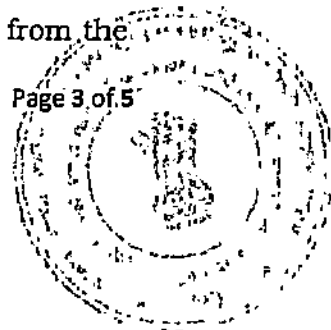


carried by him. The concealed gold had to be extracted using a screw driver. In his statement recorded before the Customs officers, the respondent admitted that the bag was purchased by one Mr. Nasir for him, that Mr. Nasir was the owner of the bag and it to be handed to one of his contacts who will come to his residence; In the present case the concealment was clever and ingenious and is a fit case for absolute confiscation; These circumstances in this case were not at all considered by the Commissioner (Appeals) in allowing redemption of the gold; The redemption fine and penalty depends on the facts and circumstances of the case and cannot be binding as a precedent; In this case the goods which were being smuggled in by passengers without declaring to the Customs were of high value and The Commissioner (Appeals) has erred in release of the gold bars on redemption fine and penalty;

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 was held on 28.11.2019. Nobody attended the hearing on behalf of the Applicant department. Shri N. J. Heera, Advocate for the Respondent attended the hearing and in his written submissions interalia prayed that;

6.1 The impugned order passed by the Appellate Authority is a well-reasoned order and the justification / rationale for permitting redemption of impugned goods to the Respondent is well founded and is based on solid grounds and sound principles of law;--The Respondent submits that in the Appeal the Appellant has stated that there was contravention of Section 77 of the Customs Act, 1962, by the Respondent, It is submitted that due to the reason of contravention of Section 77 of the Customs Act. 1962, the Ld. Appellate Authority has imposed fine and penalty on the Respondent; The Respondent submits that the Ld. Appellate Authority has clearly and rightly expressed the reason for granting the option of redemption of Gold to the Respondent; the Ld. Appellate Authority has correctly discarded the judgements relied upon by the Adjudicating Authority as being inapplicable to this case and entirely different from the



facts of the present case; The Respondent submits that it may be kindly appreciated that the Mumbai Commissionerate in similar situations/Cases have permitted the redemption of Gold under Section 125 of the Customs Act, 1962 and therefore the impugned goods in the present case also ought to have been released under Section 125 of Customs Act, 1962. The Respondent craves leave to refer and rely upon similar orders in similar cases at the time of hearing.

6.2 The Respondent cited case laws in support of their contention and prayed that the Revision Application be summarily rejected and the impugned Order in Appeal be upheld and/or any other order as deemed fit.

7. The Government has gone through the case records. It is observed that the gold was brought in the form of wires and it was concealed in the middle of the trolley bag carried by the Respondent. The concealed gold had to be extracted using a screw driver. The concealment was ingenious and it was detected only when the respondents baggage was passed through the scanning machine. The concealment was deliberate so as to avoid detection and smuggle the gold into India in contravention of the provisions of the Customs, Act 1962. The said offence was committed in a premeditated manner and clearly indicates mensrea. If he was not intercepted before the exit, the gold would have been taken out without payment of customs duty.

8. The Appellate order has lost sight of the fact that the gold was ingeniously concealed as wires in the trolley bag carried by him. In his statement recorded by the officers he had admitted that he is not the owner of the gold and the trolley bag was given to him by one Mr. Nasir who would arrange to pick it from his residence. The ratio of the judgement in the case of Abdul Razak Vs UOI reported in [2012 (275) ELT 300 (Ker)] the Hon'ble High Court of Kerala has held that " Appellant as a matter of right cannot claim release of the goods on payment of redemption and duty -As per the statement given by the Appellant

under section 108 of the Customs Act, 1962, he is only a carrier ie professional smuggler smuggling gold on behalf of others for consideration". The ratio of this judgement is squarely applicable to this case. The Hon'ble Apex Court in the case of Commissioner of Customs Vs Samynathan Murugesan [2010 (254) ELT



A15 (SC)] has held that " if the concealment weighs with Adjudicating authority to order absolute confiscation, he is right in ordering absolute confiscation and the Tribunal erred." The concealment in the case was ingenious and therefore the gold merits absolute confiscation. 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-125/18-19 dated 28.05.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III is set aside. The order of the Original Adjudication authority 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. 40/2020-CUS (WZ) /ASRA/MUMBAI DATED 08.05.2020

ATTESTED

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai
2. Shri Zarar Gulam Khan, c/o Advani, Sachwani & Heera Associates,
Nulwala Building, Ground floor, 41, Mint Road, Opp. GPO, Fort,
Mumbai-400 001.

B. LOKANATHA REDDY
Principal Commissioner (R.A)

Copy to:

1. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort,
Mumbai 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.

