

GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) 8th Floor, World Trade Centre, Centre - I, Cuffe Parade, Mumbai-400 005

F.No. 380/75/WZ/2018-RA/310 Date of Issue 29.07.2020

ORDER NO.41/2020 - CUS (WZ)/ASRA/MUMBAI DATEDOSOS.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 Maheshkumar GopaldasUdasi

Subject : Revision Application filed, under Section 129DD of the

Customs Act, 1962 against the Order-in-Appeal No. MUM-

CUSTM-PAX-APP-177/18-19 dated 22.06.2018 passed by

the Commissioner of Customs (Appeals), Mumbai-III.



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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-177/18-19 dated 22.06.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

- 2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Maheshkumar Gopaldas Udasi after he had cleared the green channel at the CSI Airport, Mumbai on 16.03.2014 and heading towards the exit. Screening of his baggage revealed a dark line of metal on the borders of the Maroon trolley carried by the Respondent. An examination of the baggage resulted in the recovery of another bag carrying used clothes and eatables carried inside the Maroon trolley bag. The cutting of the beading around the trolley bags of both the bags resulted in the recovery 8 silver coloured gold wires totally weighing 1399 grams valued at Rs. 34,75,809/- (Rupees Thirty four lacsSeventy five thousand and Eight hundred and Nine). 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/291/2015-16 dated 28.01.2016 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. 3,50,000/- (Rupees Three lacs Fifty 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-177/18-19 dated 22.06.2018 allowed the gold to be redeemed on payment of Rs. 6,25,000/- (Rupees Six lacsTwenty five thousand) 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 vision application interalia on the grounds that;

त्र अप्रिक्त (मिन्नुक्र)

5.1 The Passenger had failed to make a declaration as required under ection 77 of the Customs Act, 1962; The Respondent opted for the green thannel even though he carried gold weighing 1399 grams, whereas he

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was supposed to go through the red channel; The respondent attempted to smuggle the impugned gold by concealing it as wires in the beading of two trolley bags carried by him. The concealment being clever and ingenious is a fit case for absolute confiscation; The adjudicating authority held this case as a fit case for absolute confiscation as a deterrent to passengers misusing the liberalised facilitation process of the Green channel; The redemption fine and penalty depends on the facts and circumstances of the case and cannot be binding as a precedent; The Commissioner (Appeals) should not have allowed redemption without pointing out any legal infirmity in the order of the adjudicating authority; In his statement recorded before the Customs officers the respondent had admitted that the gold did not belong to him; 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 Commissioner (Appeals) has erred in release of the gold 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

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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 similar in situations/Cases have permitted the redemption (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 beadings around the trolley bags carried by the Respondent. The concealment was ingenious and it was detected only when the respondent's baggage was passed through the scanning machine. The concealment was deliberate so as to avoid detection and smuggle the gold into India. If he was not intercepted before the exit, the gold would have been taken out without payment of customs duty. In his statement recorded by the officers on 26.06.2014 he had admitted that he is not the owner of the gold and the gold was given to him by one Shri Kalubhai to be taken to India and to be given back at Nagpur.
- 8. The Appellate order has lost sight of the fact that the gold was ingeniously concealed as wires in the beading of the trolley bags carried by him. 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 representation authority to order absolute confiscation, he is right in ordering and the Vibral erred.". The concealment in the case was ingenious and therefore the gold present absolute confiscation. The Hon'ble Supreme Court in the case of Omerals and the Commissioner of Customs, Delhi [2003 (155) ELT 423 (SC)]

observes that " in the matter of quasijudicial discretion, interference by the Appellate authority would be justified only if the lower authorities decision was illogical or suffers from procedural impropriety". The Government observes that the concealment of gold was ingenious and was rightly confiscated absolutely; the order in original does not suffer from any procedural impropriety warranting interreference from the Appellate authority. The order of the Appellate authority is therefore liable to be set aside.

- 8. Accordingly, The impugned Order in Appeal No. MUM-CUSTM-PAX- APP-177/18-19 dated 22.06.2018 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.
- 9. Revision application is accordingly allowed.
- 10. So, ordered.

(SEĘMA ARORA) Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. 41 /2020-CUS (WZ) /ASRA MUMBAL

DATED 08 02 2020

To,

- The Principal Commissioner of Customs (Airport),
 Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
- Shri MaheshkumarGopaldasUdasi, Ashok LonareAwale Babu Chowk, NayaNakasha, Lashkaribagh, Nagpur – 440 017.

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.

Allegien

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



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ATTESTER

School and Character (S.A.)

