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SPEED POST



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

F.No. 380/8/B/2017-RA/5624

Date of Issue 11.12.19

ORDER NO. 12/2019-CUS (WZ)/ASRA/MUMBAI DATED 31.12.2019 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 Rishab Jain Kishanlal

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-591/16-17-dated 09.02.2017 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-591/16-17 dated 09.02.2017 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Rishab Jain Kishanlal at the CSI Airport, Mumbai on 17.07.2014 after clearing himself from customs at the green channel and was proceeding towards the exit. During the course of a personal search the officers noticed that the chappals worn by the respondent to be unusually heavy and when cut opened resulted in recovery of 2 gold pieces totally weighing 796 grams valued at Rs. 20,33,183/- (Rupees Twenty Lakhs Thirty three thousand One hundred and Eighty three). The gold was ingeniously concealed in the sole of the chappals worn by the Respondent.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/216/2015-16 dated 30.10.2015 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. 2,50,000/- (Rupees Two 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-591/16-17 dated 09.02.2017 allowed the gold to be redeemed for re-export on payment of Rs. 3,60,000/- (Rupees Three lacs Sixty thousand) as redemption fine and 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 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 whereas he was supposed to go through the red channel; The passenger admitted that he had purchased the gold through his savings and borrowed Five lacs and carried twenty lacs when he departed for Bangkok; The Commissioner (Appeals) has erred in release of the gold on redemption fine and penalty; Taking into consideration the facts that the gold was ingeniously concealed the Order in original had has 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 soles of the chappals 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 blatant 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 and it was ingeniously concealed in the inner soles of the chappals 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. This is not a mere case of mis-declaration. The Respondents has blatantly attempted to smuggle the gold into India in contravention of the provisions of the Customs, Act 1962 by concealing the gold in order to hoodwink the Customs Officers. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, had the Applicant not been intercepted before the exit, the gold would have been taken out without payment of customs duty.

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. Accordingly, The impugned Order in Appeal No. MUM-CUSTM-PAX- APP-591/16-17 dated 09.02.2017 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. 12/2019-CUS (WZ) /ASRA/

DATED 31.11.2019

To;

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Rishab Jain Kishanlal, Plot No. 4, Sy 34, Soujanya Colony, Bowenpally
Secunderabad, Hyderabad – 500 011.

Copy to:

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