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SPEED POST

सत्यमेव जयते

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

F.No. 380/68/WZ/B/2018-RA/3340

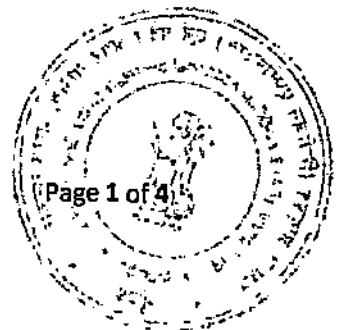
Date of Issue 28.07.2020

ORDER NO. 42/2020-CUS (WZ)/ASRA/MUMBAI DATED ²⁸⁻⁰⁷⁻²⁰²⁰ 01.2020 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 Surur Mohammed Basha

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-122/18-19 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-CUSTM-PAX-APP-122/18-19 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 Surur Mohammed Basha at the CSI Airport, Mumbai on 26.12.2015 after clearing himself from customs at the green channel. During the course of a personal search the officers noticed that the metal detector sounded a positive indications regarding some metal on his person. A personal search resulted in the recovery of two gold bars totally weighing 2000 grams valued at Rs. 46,63,680/- (Rupees Forty six lacs Sixty three thousand and six hundred and eighty). The gold was indigenously concealed in the shoes worn by the Respondent.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/499/2016-17 dated 31.01.2017 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. 4,60,000/- (Rupees Four lacs 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-122/18-19 dated 28.05.2018 allowed the gold to be redeemed on payment of Rs. 8,50,000/- (Rupees Eight lacs Fifty 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 interalia 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 two kgs, whereas he was supposed to go through the red channel; The detection was not possible by routine method of examination as the concealment was ingenious; The passenger admitted that the gold was given to him by his cousin at Abu Dhabi and was to be delivered in Mumbai; The Commissioner (Appeals) has erred in release of the gold bars 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 shoes worn by the applicant and this falls in the ambit of ingenious concealment.

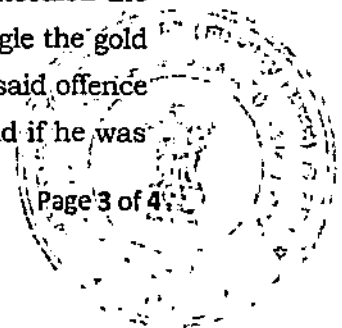
5.2 The Revision Applicant cited case laws in support of their contention and prayed that the impugned Order in Appeal be set aside and the order in original be upheld and /or any other order as deemed fit.

6. In view of the above, personal hearings in the case 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 (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 respondent did not declare the gold and it was ingeniously concealed in the shoes worn by him. This is not a mere case of mis-declaration. The Respondent had concealed the gold deliberately so as to avoid detection and evade Customs duty 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, and if he was



not intercepted before the exit, the gold would have been taken out without payment of customs duty. The Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs 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 Hon'ble Apex Court in the case of Commissioner of Customs Vs Samynathan Murugesan [2010 (254) ELT A15 (SC)] has upheld absolute confiscation of the gold ingeniously concealed. These above facts must have weighed on the original adjudicating authority to confiscate the gold absolutely. 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.

8. Accordingly, The impugned Order in Appeal No. MUM-CUSTOM-PAX- APP-122/18-19 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.

9. Revision application is accordingly allowed.

10. So, ordered.

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

ORDER No. 42/2020-CUS (WZ) /ASRA/MUMBAI2

DATED 08.05.2020

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Surur Mohammed Basha, House No. 19/243, AAR Compound, Theruvath
Ceramics Road, Kasargod, Kerala-671543.

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.

ATTESTED

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

