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SPEED POST



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. 380/06/2019-RA / 3694

Date of Issue 31.07.2020

ORDER NO. 49/2020-CUS (WZ)/ASRA/MUMBAI DATED 11.05.2020 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 Ikram Ali Sayyed Arif

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-667/18-19 dated 30.10.2018 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-667/18-19 dated 30.10.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Ikram Ali Sayyed Arif at the CSI Airport, Mumbai on 30.09.2014. During the course of a personal search the officers noticed that the metal detector sounded positive signals for presence of some metal on his person. A personal search resulted in the recovery of two gold bars and two cut gold pieces totally weighing 348 grams valued at Rs. 8,50,964/- ( Rupees Eight lacs Fifty thousand and Nine hundred and Sixty four ). The gold was indigenously concealed under the inner soles of the chappals worn by the Respondent.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/118/2016-17 dated 17.06.2017 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. 85,000/- (Rupees Eighty five 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-667/18-19 dated 30.10.2018 allowed the gold to be redeemed on payment of Rs. 1,50,000/- ( Rupees One lac 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 348 grams, whereas he was supposed to go through the red channel; The respondent attempted to smuggle the impugned gold by concealing it in the chappals worn by him.

The detection was not possible by routine method of examination as the concealment was ingenious and therefore the gold merits 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 the case of Jain Exports Vs UOI {1987 (29) ELT 753 The Hon'ble High Court of Delhi has observed that ".....the resort to section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports"; 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 ( 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 had concealed the gold in the soles of his chappals worn by the him and this falls in the ambit of ingenious concealment. 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. If he was not intercepted before the exit, the gold would have been taken out without payment of customs duty.

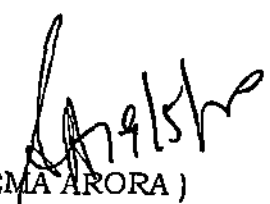
8. The Commissioner ( Appeals ) in his order has justified the redemption, allowed in his order in quoting the order of the Hon'ble Supreme Court in the case of Sri Kumar Agency vs CCE, Bangalore [2008 (232) ELT 577 ( SC) " Circumstantial flexibility, additional or different fact may make a world of difference between conclusions in two cases - Disposal of cases by blindly placing reliance on a decision not proper." The order of the Appellate authority further justifies redemption concluding the Respondent has claimed the ownership of the gold and also explained how he arranged finances abroad for its purchase and as he was not a part of any smuggling racket. The Government however notes that the same order of the Hon'ble Supreme Court in the case of Sri Kumar Agency vs CCE, Bangalore [2008 (232) ELT 577 ( SC) further states "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches.". The Appellate order has lost sight of the fact that the gold was ingeniously concealed in the soles of the chappals worn by the respondent, with the explicit intentions of smuggling the gold into India without the payment of customs duty. 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 has erred.*”. The concealment 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.

8. Accordingly, The impugned Order in Appeal No. MUM-CUSTOM-PAX- APP-667/18-19 dated 30.10.2018 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.

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

ORDER No. 49/2020-CUS (WZ) /ASRA/MUMBAI  
~~01-2020~~

DATED 19.05.2020.

To,

1. The Principal Commissioner of Customs (Airport),  
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Ikram Ali Sayyed Arif, S/o Mr. Syed Fayaz Ali, H. No.22-3-227/9,  
iind Floor, Flat No. 3, Mohammadia Estate, Mir Chowk, Mir Alam Mandi,  
Hyderabad-500002.

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.