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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. 380/35/B/16-RA/25

Date of Issue 12.10.18.

ORDER NO.68/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 31.08.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Principal Commissioner of Customs (Airport), Mumbai.

Respondent : Shri Taha Gangawali

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-555 Dated 21.12.2015 passed by the Commissioner of Customs (Appeals), Mumbai - III.



ORDER

This revision application has been filed by Commissioner of Customs, Mumbai, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTM-PAX-APP-555 Dated 21.12.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case is that the applicant arrived at the CSI Airport on 01.06.2014. Examination of his baggage and person resulted in the recovery of six gold bars weighing 699 gms valued at Rs. 17,14,004/-/- (Rupees Seventeen Lakhs Fourteen thousand and four). The two gold bars were recovered from his pant pockets and four gold bars were recovered from his shoes worn by him.
3. After due process of the law vide Order-In-Original No. 158/2014-15 dated 30.03.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold bars under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 2,00,000/- under Section 112 (a) of the Customs Act, 1962.
4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal MUM-CUSTM-PAX-APP-555 dated 21.12.2015 set aside the absolute confiscation of the gold and allowed its redemption on payment of redemption fine of Rs. 2,50,000/-, and upheld the penalty of Rs. 2,00,000/- and partly allowed the appeal of the applicant.
5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;
 - 5.1 The Order of the Commissioner (Appeals) is neither legal nor proper; It is an admitted fact that the passenger failed to make a declaration as required under section 77 of the Customs Act, 1962; As the respondent had not declared the gold the Commissioner (Appeals) order allowing redemption of the gold is not proper; The manner of concealment coupled with the fact that the respondent is not eligible to import the gold is a fit case for absolute confiscation; The lower authority had ordered absolute confiscation taking into consideration the ingenious concealment in the pocket of his trousers and his shoes; If the respondent was not intercepted he would have got away without payment of duty, mis-using the liberalized facilitation requires exemplary punishment; Redemption fine and penalty depends on the facts and circumstances of the case and cannot be binding as a precedent;
 - 5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority or such an order as deemed fit.



6. In view of the above, the Respondent was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was held on 23.08.2018. Nobody from the department attended the personal hearing. The Respondent through his advocate Shri Satish Kumar Dubey attended the hearing and reiterated the observations of the Appellate authority and in his written reply interalia submitted that;

6.1 The gold bars were kept in his shoes only for safety purpose and he did not adopt any ingenious method for concealing the gold; His statement was recorded with incorrect facts and he was forced to sign it; The main issue to be decided is whether the confiscated gold can be allowed to be redeemed on payment of redemption fine and penalty under the provisions of section 125 of the Customs Act on merits; Gold has been held liable for confiscation as the respondent has not complied with certain conditions and can be considered for release on redemption fine; Gold after liberalization cannot be considered as prohibited goods; Goods have been seized from the respondent and there is no other claimant; There are a number of cases where gold which has been absolutely confiscated has been released on payment of redemption fine.

6.2 The Respondent cited decisions in favor of their case and prayed for setting aside the Revision Application and uphold the order of the Appellate authority or such an order as deemed fit.

7. Government has gone through the facts of the case, the respondent had intentionally concealed and attempted to import the gold without declaration and therefore confiscation of the same is justified and upheld.

8. However, the facts of the case state that the Applicant had not cleared the Green Channel. Two gold bars were carried by the Applicant in his trouser pockets and 4 gold bars were recovered from his shoes, though the gold was concealed it was not indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised in regard to goods that are not prohibited. The absolute confiscation ordered by the original adjudicating authority is therefore harsh and unjustified. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. The impugned Order in Appeal therefore needs to be set aside.



9. The impugned order in Appeal is set aside. The Government allows redemption of the gold weighing 699 gms valued at Rs. 17,14,004/-/- (Rupees Seventeen Lakhs Fourteen thousand and four) on payment of redemption fine of Rs.7,00,000/- (Rupees Seven Lakhs) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from 2,00,000/- (Rupees Two lakhs) to Rs. 1,40,000/- (Rupees One lakh Forty thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

11. So, ordered.

(Handwritten Signature)
21.8.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 681/2018-CUS (WZ) /ASRA/ MUMBAI

DATED 31.08.2018

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport,
Terminal -2, Mumbai.
2. Shri Taha Gangawali
C/o Satish Kumar Dubey, Advocate
Room No. 4A, 1st Floor,
105 Dhanji Street,
Zaveri Bazaar'
Mumbai 400 003.

Copy to:

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

ATTESTED

(Handwritten Signature)
12/10/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

