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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. 380/103/B/14-RA

2011

Date of Issue 27.11.2018

ORDER NO. 721/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 18.09.2018 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), Ahmedabad.

Respondent : Shri Narendra Kumar Jain

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHM-CUSTM-PAX-APP-246-14-15 Dated 20.08.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad.



ORDER

This revision application has been filed by Commissioner of Customs, Ahmedabad, (herein referred to as Applicant) against the Order in Appeal No. AHM-CUSTM-PAX-APP-246-14-15 Dated 20.08.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad.

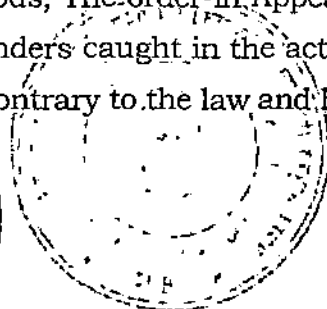
2. On 13.01.2014 the respondent arrived at the CSI Airport from Kuwait. Examination of his person resulted in the recovery of a two gold bars totally weighing 101.26 gms valued at Rs. 2,63,822/- (Rupees Two lakhs Sixty three thousand Eight hundred and Twenty two). The gold was recovered from his wallet kept in the trousers worn by him.

3. After due process of the law vide Order-In-Original F.No. VIII/48-05/AP/2014 dated 17.04.2014 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 but allowed redemption of the gold on payment of Rs. 39,000/- as redemption fine and imposed penalty of Rs. 95,108/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) AHM-CUSTM-PAX-APP-246-14-15 dated 20.08.2014 allowed its redemption for re-export on payment of redemption fine of Rs. 30,000/-, and set aside the penalty allowed the appeal of the respondent.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

5.1 The Order of the Commissioner (Appeals) errs on the following ground; It is obligatory on the part of the respondent to declare the goods as required under section 77 of the Customs Act,1962; The respondent did not declare the goods and opted to walk through the green channel; Under section 123 the when gold is seized from the person on reasonable belief that the same is smuggled, the onus to prove that it is not smuggled lies with the said person; Once the goods are held liable for confiscation the penalty becomes mandatory; The adjudicating authority has rightly confiscated the goods and gave an option for redemption, The option to re-export the goods is not available in the present case as re-export can be given only if the passenger has declared the goods; The order in Appeal if accepted will set a convenient precedent to offenders caught in the act of smuggling; The Order in Appeal therefore is contrary to the law and hence not just and proper.



5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority and the order in original be upheld or such an order as deemed fit.

6. In view of the above, the Respondent and his Advocate 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 scheduled held on 17.05.2018, 16.08.2018 and 11.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits.

7. The Government has gone through the case records it is observed that the gold was recovered from the wallet kept in the pockets of the pants worn by the Applicant and it does not appear to have been indigenously concealed. The Import of gold is restricted not prohibited. The ownership of the gold is not disputed. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant.

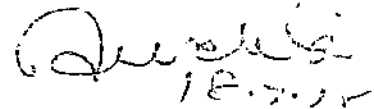
8. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The Respondent did not declare the gold as required under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified. However as there was no ingenious concealment, Government t is inclined to agree with the Order-in-original in allowing the confiscated gold on redemption fine and penalty. Government however notes that once the gold is held liable to confiscation penalty becomes mandatory therefore the Order in Appeal, has erred in setting aside the penalty. The Respondent is employed as a domestic help in Kuwait and as requested the Commissioner (Appeals) has take a lenient view and rightly allowed re-export, however redemption fine and penalties imposed should be commensurate to the offence committed so as to dissuade such acts in future. The Respondent had concealed the gold in his pant pockets and though it was not concealed ingeniously, he did not declare it and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. 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, totally weighing 101.26 gms valued at Rs. 2,63,822/- (Rupees Two lakhs Sixty three thousand Eight hundred and Twenty two) for re-export on payment of redemption fine of Rs.1,00,000/- (Rupees One lakh) under section 125 of the Customs Act, 1962. The facts of the case justify imposition of penalty under section 112 of the Customs Act,1962. A penalty of Rs. 20,000/- (Rupees Twenty thousand) is imposed under section 112(a) of the Customs Act,1962.

10. Revision application is partly allowed on above terms.

10. So, ordered.



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

ORDER No. 721/2018-CUS (WZ) /ASRA/MUMBAI

DATED 18.09.2018

To,

1. The Principal Commissioner of Customs (Airport),
6th Floor Mrudul Tower,
Ashram Road,
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Ahmedabad 380 009.
2. Shri Narendra Kumar Jain
689, Bahubali Colony,
Virangana Talkies,
Banswara, Rajasthan.

ATTESTED



S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

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

