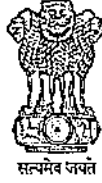


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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 380/44/B/16-RA

2062

Date of Issue

28.11.2018

ORDER NO. ⁷³⁴ /2018-CUS (WZ) / ASRA / MUMBAI/ DATED 26.09.2018 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), Mumbai.

Respondent : Shri Jadhavar Sanjay Chintaman

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-519/2018-19 dated 30.11.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by Principal Commissioner of Customs, Mumbai, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-519/2018-19 dated 30.11.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case is that the Respondent, arrived at the CSI Airport on 09.02.2015. Examination of his baggage and person resulted in the recovery of gold plates weighing 164 gms valued at Rs. 4,20,949/- (Rupees Four lakhs Twenty thousand Nine hundred and Forty nine).

3. After due process of the law vide Order-In-Original No. Air Cus/49/M/T22/9485/20 dated 09.02.2015 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. 15,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the respondent and the Applicants both filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal MUM-CUSTOM-PAX-APP-519/2018-19 dated 30.11.2015 allowed the gold on payment of redemption fine of Rs. 70,000/-, and allowed the appeal of the respondent.

5. Aggrieved with the above order the Applicants have filed this revision application interalia on the grounds that;

5.1 The order of the Commissioner (Appeals) does not appear to be legal and proper; The Applicant was diverted from the baggage screening Machine while ghe was trying to exit through the green channel; It is an admitted fact that the Applicant failed to make a true declaration under section 77 of the Customs Act,1962 and therefore allowing redemption of the goods is not proper; Due to concealment it is a fit case for absolute confiscation as a deterrent; The manner in which gold plates were concealed shows the criminal bent of mind and clear intention to evade duty; The redemption fine and penalty shall depend on the facts and circumstances of the case and cannot be binding.

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.

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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 18.09.2018. The hearing was attended by Shri R. Kulkarni, Superintendent who reiterated the contents of the Revision Application and pleaded that the Appellate order be set aside and the Order in original be restored. However, the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided ex parte on merits

7. Government has gone through the facts of the case, the respondent had 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. The gold was recovered from his baggage and therefore it was not ingeniously concealed. Import of gold is restricted not prohibited. There is no reference of any previous offence registered against the respondent. 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.

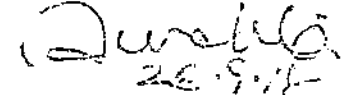
9. Further, there are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised in regard to goods that are not strictly prohibited. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. 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 Respondent did not declare the gold and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore is liable to be modified.

10. The impugned Order in Appeal is set aside. The Government allows redemption of the gold, the redemption fine imposed on gold totally weighing 164 gms valued at Rs. 4,20,949/- (Rupees Four lakhs Twenty thousand Nine hundred and Forty nine) is increased from Rs. 70,000/- (Rupees Seventy thousand) to Rs.1,65,000/- (Rupees One lakh Sixty five thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case also justify an increase in the penalty imposed. The

penalty imposed on the Applicant is also increased from 15,000/- (Rupees Fifteen thousand) to Rs. 35,000/- (Rupees Thirty Five thousand) under section 112(a) of the Customs Act,1962.

11. Revision application is partly allowed on above terms.

12. So, ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 734/2018-CUS (WZ) /ASRA/MUMBAI

DATED 26.09.2018

To,

1. The Principal Commissioner of Customs (Airport),
CSI Airport'
Mumbai.
2. Shri Jadhavar Sanjay Chintaman
C/o Shri M. G. Rohira, Advocate,
148/5, Uphaar, 10th Road,
Khar (W),
Mumbai -52.

Copy to:

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