

REGISTERED

SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 380/64 & 65/B/WZ/2018-RA / 3325
Issue

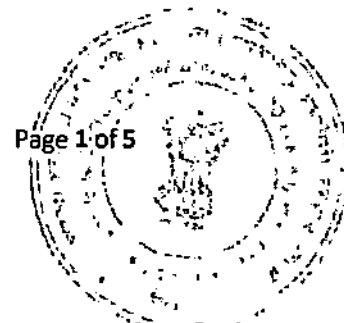
Date of
20.07.2020

ORDER NO. ⁷⁴⁻⁷⁵ /2020-CUS (WZ)/ASRA/MUMBAI DATED 28.05.2020 OF
THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

Applicant : Pr. Commissioner of Customs, Mumbai.

Respondent : Shri Chaganlal Tolaji Rawal
Smt. Laxmi Chaganlal Rawal

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-58/18-19 dated 27.04.2018 passed by
the Commissioner of Customs (Appeals), Mumbai-III.



ORDER

This revision application has been filed by Shri Chaganlal Tolaji Rawal and Smt. Laxmi Chaganlal Rawal (herein referred to as Applicant) against the order No. MUM-CUSTM-PAX-APP-58/18-19 dated 27.04.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that on the basis of intelligence the Respondents, who had arrived from Dubai on 13.02.2016 were intercepted after they had cleared the Green Channel. As the metal detector gave positive signals a detailed examination of person resulted in the recovery of assorted gold jewelry weighing 403 grams worn by the applicants on their person. An examination of their baggage resulted in the recovery of 322 grams. The gold recovered from their baggage was in the form of metal discs and small rectangular pieces, painted black and recovered by breaking open mini speakers and magnetic bracelets respectively. The gold totally weighed 725 grams and was valued at Rs. 19,25,498/- (Rupees Nineteen Lakhs Twenty five thousand Four hundred and Ninety eight.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/494/2016-17 dated 30.01.2017 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 1,92,550/- (Rupees One lac Ninety Two thousand Five hundred and fifty.) under Section 112 (a) and (b) of the Customs Act,1962.

4. Aggrieved by this order the Respondents filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. MUM-CUSTM-PAX-APP-58/18-19 dated 27.04.2018 set aside absolute confiscation and allowed redemption of the gold on payment of redemption fine of Rs. 3,50,000/- (Rupees three lacs fifty thousand) and upheld the penalty imposed.



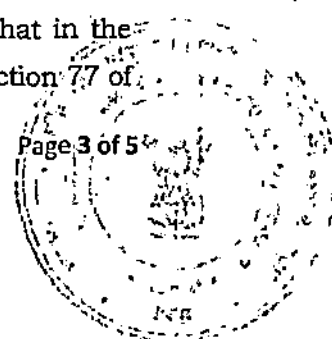
5. Aggrieved with the above order the Applicant department, has filed this revision application interalia on the grounds that;

5.1 The Passenger had failed to make a declaration as required under section 77 of the Customs Act,1962; The Respondent in his statement recorded on 13.02.2016 stated that the gold out of the 725 grams of gold, 403 grams was purchased by him and the 322 grams recovered from the mini speakers and magnetic bracelets was given to him by his friend Mr. Sushilkumar Doshi to be handed over to his brother; The Original adjudicating Authority has specifically observed that the manner of concealment of the gold was such that detection was not possible by routine method of examination and required special efforts by the customs officers to recover the gold.; Such ingenious concealment merits absolute confiscation; The Respondent was merely a carrier and the gold did not belong to him; The circumstances of the case and the intention of the respondent was not considered by the Commissioner(Appeals); The redemption fine and penalty depends on the facts and circumstances of the case and cannot be binding as a precedent; In the present case the manner of concealment was ingenious and it had weighed with the adjudicating authority to order absolute confiscation; The order in original does not suffer from any vice and therefore the Commissioner (Appeals) should not have allowed redemption;

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. Personal hearings in the case were scheduled on 28.11.2019. The advocate for the Applicant Shri N. J. Heera, Advocate appeared for hearing on behalf of the Respondents in his written reply interalia stated 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 respondents submit that they are 61 and 62 years old and the 403 grams of gold was purchased and 322 grams was carried for a friend.; 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 facts of the case, It is on record that the gold was not declared as mandated under section 77 of the Customs Act,1962. The baggage of the Applicant was subjected to a search and thereafter the gold was recovered. Part of the gold was ingeniously concealed in the mini speakers and magnetic bracelets carried by the Respondent and it was recovered by breaking open the mini speakers and magnetic bracelets. The manner of concealment is extremely deceptive and ingenious and clearly indicates an attempt to smuggle the gold. The attempt also indicates mensrea and an absolute contempt of the law. Had the Applicant department not received intelligence in respect of the hidden gold and the gold worn by the Respondent not been intercepted before the exit, the gold would have been taken out without payment of customs duty. These aspects have weighed on the original adjudicating authority to confiscate the gold absolutely. The Hon'ble Supreme Court in the case of Om Prakash Bhatia Vs Commissioner of Customs, Delhi[2003 (155) ELT 423 (SC)] states that in the matter of quasi-judicial discretion, interference by the Appellate Authority would be justified if the lower authority's decision was illogical or suffers from procedural




impropriety. The impugned gold is therefore liable for absolute confiscation and the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalty. The Appellate Order is therefore liable to be set aside.

9. Accordingly, The impugned Order in Appeal No. MUM-CUSTM-PAX-APP-58/18-19 dated 27.04.2018 passed by the Commissioner of Customs (Appeals), Mumbai is set aside. The order of the Original adjudicating authority is upheld.

10. Revision application is disposed of on above terms.

11. So, ordered.


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

74-75
 ORDER No. /2020-CUS (WZ) /ASRA/MUMBAI DATED 28.05.2020

To,

1. The Commissioner of Customs, T-2, C.S.I. Airport, Andheri Mumbai-400 099.
2. Shri Chaganlal Tolaji Rawal
 Smt. Laxmi Chaganlal Rawal
 Sangam Building, 1st Lane, Goregaon (E), Mumbai-400 063.

Copy to:

3. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

ATTESTED


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

