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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. 371/77-78/B/15-RA/3593 Date of Issue 29.02.2020

ORDER NO. ~~82-83/2020~~ CUS (WZ)/ASRA/MUMBAI DATED 22.06.2020 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 : Shri Kamaluddin
: Shri Mohammed Sohail

Respondent : Commissioner of Customs, Goa.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. GOA-CUSTM-000-APP-037-038/2015-16 dated 22.09.2015 passed by the Commissioner of Customs (Appeals), Pune Appeal-II CX. (At Goa).



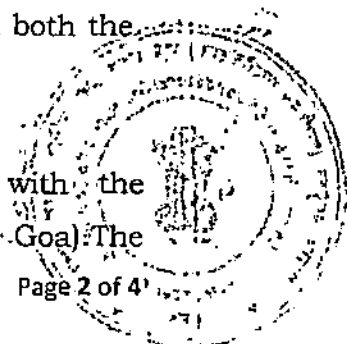
ORDER

This revision application has been filed by Shri Kamaluddin and Shri Sohail (herein referred to as Applicant) against the order No. GOA-CUSTOM-000-APP-037-038/2015-16 dated 22.09.2015 passed by the Commissioner of Customs (Appeals), Pune Appeal-II CX. (At Goa).As the facts of the case are identical and these cases have been addressed in one Appellate order, both these Revision Applications are being decided together.

2. Briefly stated facts of the case are that the Officers of Customs, Goa on 26.02.2014 intercepted the applicants, a father son duo, Shri Kamaluddin was the father, who had arrived from Dubai via Mumbai. Shri Mohammed Sohail was the son who arrived on the same flight from Mumbai. Examination of the person of Shri Mohammed Sohail resulted in the recovery of a gold bar weighing 500 grams valued at Rs. 13,25,098/- (Rupees Thirteen Lakhs Twenty Five thousand and Ninety eight). The gold bar was concealed in his right shoe. Investigations revealed that the plan to smuggle gold was hatched by Shri Kamaluddin, who arrived on the international leg of the flight from Dubai and handed the gold in flight to his son, Shri Mohammed Sohail who travelled on the domestic leg of the same flight.

3. The Original Adjudicating Authority, vide order No. 0352015-JC (CUS) dated 30.01.2015 absolutely confiscated the gold mentioned above under the provisions of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 1,25,000/- (Rupees One lac Twenty Five thousand) was imposed on Shri Kamaluddin and a penalty of Rs. 60,000/- (Rupees Sixty thousand) was imposed on Shri Mohammed Sohail under Section 112 (a) & (b) of the Customs Act, 1962. A penalty of Rs. 10,000/- (Rupees Ten Thousand) was also imposed on both the applicants under section 114AA of the Customs Act, 1962.

Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), Pune Appeal-II CX. (At Goa).The



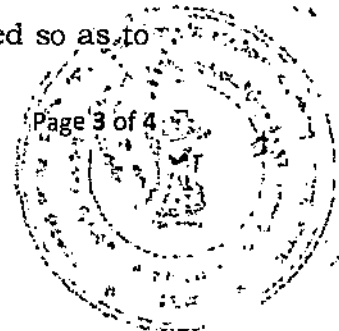
Commissioner of Customs (Appeals), vide his order No. GOA-CUSTOM-000-APP-037-038/2015-16 dated 22.09.2015 rejected the Appeal for non compliance of section 129E of the Customs Act, 1962.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that; the gold imported by the Applicant is not bonafide baggage and is prohibited. The Applicant had purchased the gold with his hard earned money. The gold was brought for his family use and not for sale or profit.; Under section 79 of the Customs Act, 1962 bonafide baggage comes into play only in respect of article which are allowable under duty free allowance which is not the case and therefore observations in respect of non-bonafide baggage under section 79 are not correct.; Import of gold is not prohibited, and therefore gold imported by the Applicant is not prohibited in nature.

The Revision Applicant cited various assorted judgments wherein gold has been allowed to be redeemed on redemption fine and penalty and prayed for allowing redemption of the gold on payment of nominal redemption fine and personal penalty and set aside the penalty imposed under section 114AA of the Customs Act, 1962.

6. Personal hearings in the case were scheduled to be held on 03.10.2019, 07.11.2019 and 20.11.2019. Nobody from the department or the Applicant attended the said hearings the case is therefore being decided on merits ex-parte.

7. The Government has gone through the case records. The Government observes that the gold was being smuggled under premeditated plan wherein The father, Shri Kamauddin arrives on an International Dubai- Mumbai - Goa Flight. The son, Shri Mohammed Sohail, boards the Mumbai - Goa domestic leg of the flight. The gold is transferred by the Father to the son in-flight, knowing that the domestic passengers are never checked. The Applicant did not declare the gold as required under Section 77 of the Customs Act, 1962. The gold bar was concealed in his shoe, in an obvious attempt to escape duty. There is absolutely no doubt that the entire process was intelligently planned so as to



avoid detection and evade Customs duty and to smuggle the gold into India. Had the Applicants not been intercepted before the exit, the Applicant would have again taken out the gold without payment of customs duty. The absolute confiscation of the gold is therefore necessary so as to deter and discourage such activities in future.

8. In view of the above facts the 500 gms of seized gold is liable for absolute confiscation under Section 111 of Customs Act, 1962 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 a penalty. The Revision Applications are therefore liable to be dismissed.

9. The Government therefore dismisses the impugned Revision Applications and upholds the impugned Order in Original.

10. So, ordered.


(SEEMA ARORA)

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

82-83
ORDER No. /2020-CUS (WZ) /ASRA/MUMBAI DATED 22.06.2020

To,

Shri Kamaluddin
Shri Mohammed Sohail
2707, Gali Kaley Khan Kucha, Chelan Darya Ganj, New Delhi-110 002.

Copy to:

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

ATTESTED


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

