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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. 371/46/B/2018-RA

Date of Issue 29.11.2018

ORDER NO. 845/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 24.10.2018 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 : Shri Shanawaz Khan Nawab Khan

Respondent : Commissioner of Customs (Airport), CSI, Mumbai

Subject :Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1023/17-18 dated 19.02.2018 passed by the Commissioner of Customs (Appeals) Mumbai-III.

ORDER

This revision application has been filed by Shri Shanawaz Khan Nawab Khan (herein after referred to as the "Applicant") against the order in Appeal No. MUM-CUSTOM-PAX-APP-1023/17-18 dated 19.02.2018 passed by the Commissioner of Customs (Appeals) Mumbai-III.

2. Briefly stated facts of the case are that the applicant, on prior information was intercepted on arrival at the CSI Airport on 04.03.2014. Examination of his baggage resulted in the recovery of two gold bars both weighing 600 grams totally valued at Rs. 16,35,441/- (Rupees Sixteen Lakhs Thirty five thousand Four hundred and forty one). The gold bars were ingeniously concealed in the cavities of the handles on the screw drivers of the screw drivers sets carried by the Applicant .

3. The Original Adjudicating Authority, vide its Order in Original No. ADC/ML/ADJN/138/2015-16 dated 01.09.2015 interalia absolutely confiscated the impugned gold referred above and imposed a penalty of Rs. 1,60,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals). Commissioner of Central Excise (Appeals) Mumbai-III, vide his Order-in-Appeal No MUM-CUSTOM-PAX-APP-1023/17-18 dated 19.02.2018 was pleased to reject 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 against law, weight of evidence and circumstances and probabilities of the case; Gold is not a prohibited item and in a liberalized era it can be released on payment of redemption fine and baggage duty; The Appellate authority has simply glossed over the judgments and points raised in the appeal grounds and rejected the Appeal; the Applicant was all along at the red channel under the control of the officers; The departments contention that the gold belongs to some other person is not based

on any evidence; The adjudication authority in one way states that the passenger has not declared the gold and also avers that the Applicant is not the owner of the goods ignoring the fact that only the owner of goods is empowered to file a declaration under section 77 of the Customs Act, 1962; The Applicant further pleaded that as per the judgement by CEGAT South Zonal Bench, Chennai in the case of Shaikh Shahabuddin vs Commissioner of Customs Chennai has held that absolute confiscation without giving the option of redemption for gold concealed in shaving cream tubes is not proper, and the case was remanded for denovo adjudication; In the case of Peringatil Hamza vs Commissioner of Customs , Mumbai 2014 (309) E.L.T. 259(Tri- Mumbai in the seizure of Rs. 24 lakhs of currency the redemption fine of 10% and penalty of Rupees 2 lakhs was found appropriate.

5.2 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for setting aside the impugned order and permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

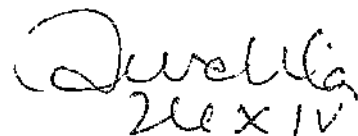
7. The Government has gone through the case records it observed that the Applicant had ingeniously concealed the gold in the cavities of the handles on the screw drivers of the screw drivers sets carried by the Applicant. It was an attempt made with the intention to get past the customs authorities. The concealment of the gold was deliberately planned to avoid detection and to dodge the Customs Officer and smuggle out the same without payment of appropriate duty. This ingenious concealment clearly indicates mensrea, and that there was no intention of declaring the gold to the authorities and if it was not intercepted, the gold would not suffer payment of customs duty. The case laws cited by the Applicant are not applicable in the instant case. There is no doubt about the fact that the provisions of Customs Act, 1962 has been contravened and therefore, the seized gold has been rightly held liable for absolute

confiscation and the Applicant is liable for penal action. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal passed by the Commissioner(Appeals) and holds that the impugned gold has been rightly confiscated absolutely so as to deter such passengers from such activities in the future. Hence the Revision Application is liable to be rejected.

8. The Government therefore finds no reason to interfere with the impugned Order-in-Appeal. The Appellate order MUM-CUSTOM-PAX-APP-1023/17-18 dated 19.02.2018 passed by the Commissioner of Customs, Mumbai-III is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.



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

ORDER No. 845/2018-CUS (WZ) /ASRA/

DATED 24.10.2018

To,

Shri Shanawaz Khan Nawab Khan
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

Copy to:

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