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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. 380/42/B/WZ/2018 -RA

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Date of Issue 28.11.2018

ORDER NO. 854 /2018-CUS (W Z) / ASRA / MUMBAI/ DATED 26.10.2018
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 : Commissioner of Customs, CSIA, Mumbai.

Respondent : Shri Sayyad Hussain Kumbha Sayyad.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-1121/17-18 dated 13.03.2018
passed by the Commissioner of Customs (Appeals),
Mumbai Zone-III.



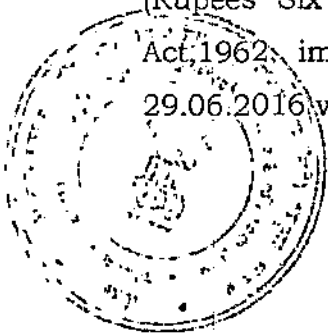
ORDER

This revision application has been filed by Commissioner of Customs, CSIA, Mumbai (herein referred to as Applicant) against the Order in Appeal No MUM-CUSTM-PAX-APP-1121/17-18 dated 13.03.2018 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. The issue in brief is that on 18.10.2014 the respondent arrived at the CSI Airport, Mumbai, he was intercepted by the Air Intelligence Unit (AIU) at the exit gate of CSI Airport, Mumbai. Further personal search of the passenger resulted into recovery of four white coated metal sheet pasted on the side of the basket of airport trolley totally weighing 2330 gms of gold.

3. After due process of the law, the Additional commissioner of Customs, CSIA, Mumbai vide Order-In-Original No. ADC/RR/ADJN/143/2016-17 dated 29.06.2016, ordered absolute confiscation of the seized gold i.e. 04 rectangular white metal sheets of gold totally weighing 2330 gms and valued at Rs. 58,20,875/- (Rupees Fifty Eight Lakhs Twenty Thousand Eight Hundred and Seventy Five Only) under Section 111 (d) (l) and (m) of the Customs Act, 1962, imposed penalty of Rs. 6,00,000/- (Rupees Six Lakhs Only) under Section 112 (a) and (b) of the Customs Act, 1962 on the Respondent and also order absolute confiscation of the sticker mentioning "MAX LOAD 90 KG WITH IMAGES" used for concealing the gold having no commercial value.

4. Aggrieved by the said order, the Respondent filed appeal before the Commissioner of Customs (Appeals), Mumbai Zone-III. who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-1121/17-18 dated 13.03.2018 allowed redemption of the gold on payment of redemption fine of Rs.10,50,000/- (Rupees Ten Lakhs and Fifty Thousand Only) and penalty of Rs. 6,00,000/- (Rupees Six Lakhs Only) under Section 112 (a) and (b) of the Customs Act, 1962, imposed on the Respondent in the Order-in-Original dated 29.06.2016 was upheld.



5. Aggrieved with the above order the Applicants has filed a condonation of delay Application pleading that the delay in filing the Revision Application by 24 days may be condoned. The Revision Application has been filed on the following grounds :

5.1 The Respondent cleverly concealed the metal sheets gold by pasting in the side of the basket of the Airport trolley and covered it with a white sticker mentioning "Max Load 90 Kg with Images" and did not declare it to avoid payment of Customs duty. The passenger had opted for Green Channel for Customs clearance without declaring the aforesaid items to the Customs. This clearly indicates that, the concealment was not only ingenious one but also premeditated. The seized gold finally valued at Rs. 58,20,875/- by the Govt. Approved Valuer. Thus rendering the goods as prohibited goods in terms of Section 2(33) of the Customs Act,1962. The passenger in his statement dated 18.10.2014 recorded under Section 108 of the Customs Act, 1962 has admitted that that he did not declare the gold to avoid payment of customs duty and that he was also aware that import of gold without declaration and payment of Customs duty is an offence punishable under the Customs law and admitted knowledge, possession, carriage, concealment, non-declaration and recovery of the seized gold.

5.2 The Respondent declared the "Total value of dutiable goods being imported "at column no.9 of the Declaration form as "blank". Hence he had failed to make a true declaration in the Customs Declaration Form of the contents of his baggage to Customs as required under Section 77 of the Customs Act, 1962 and therefore the goods under seizure are liable to confiscation under Section 111(d), (I) & (m) of the Customs Act,1962.

5.3 The Commissioner (Appeals) ordered release of seized gold on payment of redemption fine considering the precedents narrated in Para 4 of the Order in Appeal i.e list of earlier cases where seized gold was allowed to be released on payment of redemption fine. In this lists the cases



different types of concealment and the only cases having some similarity of concealment is listed at Sr. No. 1,4,5, and 6 of Para 4 of Order-in-Appeal wherein the department has filed Revision Applications against the same. Therefore it cannot be a precedent for the present case.

5.4 Therefore, prayed that the impugned Order-in-Appeal may be set aside and the Order-in-Original be upheld

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 held 18.09.2018. Shri Rajkumar Kulkarni, Supderindent, Review Cell, CSIA, Mumbai appeared on behalf of the Applicant.. The Applicant reiterated the contents of Revision Application and pleaded that the Order-in-Appeal and Order-in-Original be restored. However, the Respondent did not attend the same. Hence a 2nd Personal Hearing was held on 08.10.2018/15.10.2018 and here also the Respondent nor his representative attended the same.

7. The Government has gone through the facts of the case. In the interest of justice, delay of 24 days in filing this Revision Application is condoned and Revision Application is being decided on merits. It is a fact that the metal sheets gold were not declared by the Respondent as required under Section 77 of the Customs Act,1962 and under the circumstances confiscation of the gold is justified.

8. The Government observed that the Respondent cleverly concealed the metal sheets gold by pasting in the side of the basket of the Airport trolley and covered it with a white sticker mentioning "Max Load 90 Kg with Images" and did not declare it to avoid payment of Customs duty. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration. In this case the Respondent had blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that Applicant had no intention of declaring the gold to the authorities and

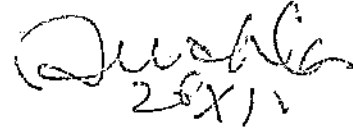


was not intercepted before the exit, the Respondent would have taken out the gold without payment of Customs duty. The Order-in-Appeal allowing redemption of the gold, therefore is liable to be set aside.

9. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty. In view of the above the impugned Order-in-Appeal No. MUM-CUSTM-PAX-APP-1121/17-18 dated 13.03.2018 is set aside and the Order-In-Original No. ADC/RR/ADJN/143/2016-17 dated 29.06.2016 is upheld as legal and proper.

10. Revision application is allowed on above terms.

11. So, ordered.



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

ORDER No. 854/2018-CUS (WZ) /ASRA/MUMBAI

DATED 26.10.2018

To,

1. The Commissioner of Customs
CSI Airport,
Mumbai
2. Shri Sayyad Hussain Kumbla Sayyad,
S/o Kumbla Sayyad Ali,
K.s. Manzil, Near Railway Station,
Kumbla Post, Dist. Kasargod,
Kerala - 671 321.

ATTESTED

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

Copy to:

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

