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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. 380/95-A/B/16-RA

1/2/16

Date of Issue 29.11.2018

ORDER NO. 903/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 31.10.2018
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 : Principal Commissioner of Customs, CSIA, Mumbai

Respondent : Shri Yakub Khuja Miya Shaikh

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-690-15-16 dated 03.03,2016
passed by the Commissioner of Customs (Appeals),
Mumbai-III.

ORDER

This Revision Application has been filed by Principal Commissioner of Customs, CSIA, Mumbai (herein referred to as Applicant) against the Order in Appeal No MUM-CUSTM-PAX-APP-690-15-16 dated 03.03,2016 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case is that on 02.10.2014 Shri Yakub Khuja Miya Shaikh, an Indian passport holder, arrived at the CSI Airport from Sharjah by flight No. G9-0406 was intercepted on suspicion by the officers of the Air Intelligence Unit (AIU) while proceeding towards the exit gate after he cleared himself through customs 'Green Channel'. Personal search of the passenger resulted in the recovery of 238 gms gold valued at Rs. 5,87,146/- which was concealed as chrome coated buckle and loop of the belt worn by him. The said gold was detained vide D.R. A 47012 dated 02.10.2014. The charges were orally communicated to the passenger by the custom officer and he requested that an order may be passed without issuance of written Show Cause Notice. He desired to be heard in person by the Adjudicating Authority, accordingly the case was referred for adjudication.
3. The personal hearing held on 17.11.2014 was attended by Shri Mohammed Shahnawaz Khan, an authorized representative of the passenger. During the course of personal hearing, he inter alia submitted that gold was purchased from own savings and for personal use. The case was adjudicated by the Additional Commissioner of Customs, CSI Airport, Mumbai vide his Order-in-Original No. Air Cus/M-T2/9230/2014 dated 17.11.2014 he absolute confiscated the gold wire of weight 238 gms gold and valued at Rs. 5,87,146/- under Section 111 (d) and (m) of the Customs Act, 1962, and imposed Personal Penalty of Rs. 50,000/- under Section 112 of the Customs Act, 1962 on the passenger.
4. Aggrieved by the said order, Shri Mohammed Shahnawaz Khan, an authorized representative of the passenger filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal MUM-CUSTM-PAX-APP-

690-15-16 dated 03.03,2016 imposed fine of Rs. 1,00,000/- for redemption of impuged goods and upheld the penalty of Rs. 50,000/- .

5. Aggrieved with the above order the Applicant has filed this Revision Application interalia on the grounds that;

5.1 The Order-in-Appeal does not appear to be legal and proper.

5.2 The manner of recovery of gold from the respondent clearly indicated that the concealment was not only ingenious one but also premeditated. Also the respondent admitted that he had made a wire of gold and stitched it inside his bag and that to take out the gold wire the stitching was cut upon.

5.3 Order-in-Appeal has been passed in respect of the person Shri Mohammed Shahnawaz Khan, who is only an authorized representative of the passenger Shri Yakub Khuja Miya Shaikh vide duly notarized Authorised letter dated 07.10.2014. The Commissioner(Appeals) has not appreciated this fact and mentioned Shri Shahnawaz Khan (Authority letter holder) as "appellate passenger" in the Order-in-Appeal. Thus Commissioner(Appeals) had issued the Order-in-Appeal with technical errors. On this ground the Commissioner(Appeals)'s order is not correct.

5.4 The passenger opted not to declare possession of these gold by walking through green channel was in violation of provisions of Section 77 of the Customs Act, 1962.

5.4 Since the respondent was not an 'eligible passenger' and the blatant mis-use of the facility of opting to clear through Green channel by ingeniously concealing the gold in the sides of his baggage for recovering it, the bag was required to be cut open indicates the greed and criminal mindset of the passenger. The manner of concealment bring clever and ingenious coupled with the fact that the respondent was not eligible for import of gold was a fit case for absolute confiscation as a deterrent to passengers mis-using the facility of Green channel with concealed gold. Hence the Commissioner(Appeals) order was not correct on this ground.

5.5 The Commissioner(Appeals) has mainly relied upon the judgment in the case of Dhanak Ramji Vs Union of India reported in 2010 (252) ELT A 102 (SC) which does not apply in the instant case as the aspect of concealed of the gold ingeniously was not the issue in the cited case. In this case, modus operandi for concealment of gold was deceptive. The passenger did not declare and attempted to clear gold concealed as chrome coated buckle and loop of the belt. The ingenious modus operandi weighed in favour of absolute confiscation. Whereas, in the cited case such concealment was not there, hence the same is not supporting the stand taken by the Commissioner(Appeals)

5.6 Regarding the redemption fine and penalty it is pertinent to mention here that it shall depend on the facts and circumstances of the case and other cases cannot be binding as a precedent. In support they relied on the judgment of Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India [1987 (29) ELT 753] wherein the Court has observed:

“...the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.”

Therefore, on ground along the Order-in-Appeal was not proper in the eyes of law as it has not considered the facts of the present case where the goods in question were recovered from the belt worn by the passenger concealed gold in the form of chrome coated buckle and loop of the belt, which falls under the ambit of ingenious concealment and leads to other ulterior motives.

5.7 Prayed that the Order-in-Appeal dated 03.03.2016 be set aside and the Order-in-Original be upheld.

6. In view of the above, a personal hearing in the case was scheduled held on 01.10.2018, where Shri R.P. Kulkarni, Superintendent(Review), CSI Airport, Mumbai attended on behalf of the Applicant. The Applicant reiterated the submission made in Revision Application and pleaded that the impugned Order-in-Appeal be set aside and Revision Application be allowed. However, the Respondent and his Advocate did not attend the hearing. Hence personal

hearing in the case was again scheduled on 30.10.2018 and 06.11.2018. Again neither the Respondent nor his advocate attended the said hearing.

7. The Government has gone through the case records it is observed that the gold were not declared as required under section 77 of the Customs Act, 1962 by the Respondent. Therefore the confiscation of the gold is justified.

8. The Government has gone through the case records it is observed that Shri Yakub Khuja Miya Shaikh, had arrived at the CSI Airport and was intercepted on suspicion by custom officers while proceeding towards the exit gate after he cleared himself through customs 'Green Channel'. Personal search of the passenger resulted in the recovery of 238 gms gold valued at Rs. 5,87,146/- which was concealed as chrome coated buckle and loop of the belt worn by him. The said gold was detained vide D.R. A 47012 dated 02.10.2014. At the time of adjudicating, the passenger vide duly notarized Authorised letter dated 07.10.2014, authorised his cousin Shri Mohammed Shahnawaz Khan to sign the documents on behalf of the passenger.

9. The Government notes that Shri Yakub Khuja Miya Shaikh is the passenger and also the appellant in the Appeal with Commissioner(Appeal). Shri Mohammed Shahnawaz Khan is only a authorized person who filed appeal on behalf of the passenger Shri Yakub Khuja Miya Shaikh. Hence, Government holds Shri Yakub Khuja Miya Shaikh as the Appellant in the Appeal file with Commissioner(Appeals) and Respondent in this Revision Application.

10. The Respondent had admitted that he had concealed the gold in the form of chrome coated buckle and loop of the belt. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. 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 the Respondent had no intention of declaring the gold to the authorities and gold was detected only after the respondent was intercepted on suspicion by custom officers while proceeding towards the exit gate after he cleared himself through customs 'Green Channel' Had the

Respondent not intercepted on suspicion by custom officers, he would have taken out the gold without payment of customs duty. The Appellate order allowing redemption of the gold and setting aside the penalty therefore is liable to be set aside.

9. The above acts have therefore rendered the Respondent 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. In view of the above the impugned Order in Appeal No. MUM-CUSTOM-PAX-APP-690-15-16 dated 03.03,2016 is set aside and the Order-In-Original No. Air Cus/M-T2/9230/2014 dated 17.11.2014 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. 903 /2018-CUS (WZ)/ASRA/MUMBAI DATED 31.10.2018

To,

1. The Principal Commissioner of Customs
CSI Airport,
Mumbai
2. Shri Yakub Khuja Miya Shaikh,
C/o Shri Mohammed Shahnawaz Khan,
8/B, 209/3031,
Tagore Nagar,
Vikhroli(East),
Mumbai 400 083.

Copy to:

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