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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. 380/88-A/B/16-RA

2167

Date of Issue 29.11.2018

ORDER NO. 904/2018-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 Abdul Hafeez Hazi Ibrahim Mansuri

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-692-15-16 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-CUSTOM-PAX-APP-692-15-16 dated 03.03,2016 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case is that on 27.09.2014 Shri Abdul Hafeez Hazi Ibrahim Mansuri arrived at the CSI Airport from Dubai by flight No. SG 014 and opted for green channel for customs clearance. He was diverted from Baggage Screening Machine for detailed examination of his baggage. A detailed examination of his baggage resulted in the recovery of gold wire weighing 250 gms valued at Rs. 6,44,750/- found concealed in the sides of his baggage recovered after cutting open the stitches in his bag. The passenger was not eligible for gold import and also attempted to clear gold in the form of wire by concealing it in the sides of his baggage. Hence the gold was detailed vide D.R. No. 45240 dated 27.09.2014. 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. During the course of personal hearing held on 27.11.2014, he admitted that he had made a wired gold and stitched it inside his bag and that to take out the gold wire the stitching was cut open. The case was adjudicated by the Joint Commissioner of Customs, CSI Airport, Mumbai vide his Order-in-Original No. JC/RR/ADJN/177/2014-15 dated 28.11.2014 he absolute confiscated the gold wire of weight 250 gms and valued at Rs. 6,44,750/- under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed Personal Penalty of Rs. 75,000/- under Section 112 (a) of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the Respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal MUM-CUSTOM-PAX-APP-692-15-16 dated 03.03,2016 imposed fine of Rs. 1,00,000/- for redemption of impugned goods and upheld the penalty of Rs. 75,000/- .

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 the respondent 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 referred to the order of the CESTAT, Chennai in the case of A Rajkumari Vs CC Chennai [2015 (321) ELT 540 (Tri-Chennai) for drawing the conclusion of allowing the release of ingeniously concealed gold on redemption fine under Section 125 of the Customs Act, 1962 and also held that the Hon'ble Apex Court vide order in the case is report in 2015 (321) ELT A207 (SC) has affirmed the said order of CESTAT, Chennai. However, it may be seen that the Hon'ble Supreme Court dismissed the Appeal of the Revenue

on the ground of delay. Therefore, the Commissioner (Appeals) stand in stating that the order of CESTAT, Chennai is affirmed by the Hon'ble Apex Court is not the fact.

5.6 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.

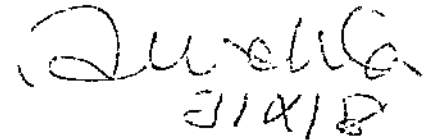
7. The Government has gone through the case records it is observed that the gold wired were not declared as required under section 77 of the Customs Act, 1962 by the Respondent. Therefore the confiscation of the gold is justified.

8. The Government has gone through the case records it is observed that 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. 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's baggage was diverted from B.S.M and detailed examination of his baggage was conducted. Had the Respondent not been diverted from B.S.M, 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-692-15-16 dated 03.03.2016 is set aside and the Order-In-Original No. JC/RR/ADJN/177/2014-15 dated 28.11.2014 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. ⁹⁰⁴/2018-CUS (WZ) /ASRA/MUMBAI DATED 31.10.2018

To,

1. The Principal Commissioner of Customs
CSI Airport,
Mumbai
2. Shri Abdul Hafeez Hazi Ibrahim Mansuri
297, Isak manzil,
3rd Floor, Room No. 39.
SVP Road,
Mumbai.

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.