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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. 380/1-A/B/16-RA

2189

Date of Issue 29.11.2018

ORDER NO. 931/2018-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 : Commissioner of Customs, CSI Airport, Mumbai

Respondent 1: Shri Nitin P. Malde

Respondent 2: Smt. Sangita N. Malde

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-498-15-16 dated 23.11.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This revision application has been filed by The Commissioner of Customs, CSI, Mumbai. (herein referred to as Applicant) against the order MUM-CUSTM-PAX-APP-498-15-16 dated 23.11.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Nitin P. Malde and Smt. Sangita N. Malde both Kenyan citizens at the CSI Airport, Mumbai on 15.05.2015 after clearing themselves from customs at the green channel. Examination of their baggage and person resulted in recovery of a assorted gold chains, silver coloured kadas and gold bits totally weighing 1748 grams valued at Rs. 43,25,218/- (Rupees Forty three Lakhs Twenty Five thousand and two hundred and Eighteen).

3. Totally 622 grams of gold was recovered for Shri Nitin P. Malde. Of the three gold chains (322 grams) recovered from the possession of Shri Nitin P. Malde two gold chains were concealed in the socks worn by him, one gold chain was worn on the neck, two Kadas (150 grams) were worn by him and one gold piece (150 grams) was carried by him in his pocket. Similarly a total of 1126 grams of gold was recovered from Smt. Sangita N. Malde, One gold chain (380 grams), Two silver coloured gold kadas (100 grams) and three cut pieces (450 grams) were stuck to the bottom of her feet with the help of Sanitary napkins inside her shoes. Apart from the above five gold kadas (196 grams) were worn by her.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/200/2015-16 dated 27.10.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 2,00,000/- each under Section 112 (a) and (b) of the Customs Act,1962.

4. Aggrieved by this order the respondent filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. MUM-CUSTM-PAX-APP-498-15-16 dated 23.11.2015, allowed the gold to be redeemed for re-export on payment of Rs. 6,00,000/- as redemption fine and upheld the penalty of Rs. 2,00,000/- already imposed and partially allowed the appeal of the Respondents.

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 mainly because, the manner of recovery of the gold clearly indicates that the concealment was not only ingenious but also premediated with a clear intention to evade duty; The

Passengers both failed to make a true declaration; The option of re-export can be extended under Section 80 of the Customs Act, 1962 only when a true declaration of the goods has been made under section 77 of the Customs Act, 1962 ; The passengers are foreign nationals and not entitled to import gold; In the present case the manner in which the concealment was planned is a fit case for absolute concealment; The Commissioner (Appeals) has erred in granting release of the gold for re-export under section 125 of Customs Act, 1962 as the Respondents did not declare the gold on their own and the gold was detected only after they were intercepted; Such acts of misusing the liberalized facilitation should be meted out with exemplary punishment; The passengers had concealed the gold with the express intention of evading duty and they are also not eligible to import gold; releasing the gold on redemption fine depends on the facts and circumstances of the case and is not binding as a precedent.

5.2 The Revision Applicant cited case laws in support of his contention and prayed that the impugned Order in Appeal be set aside and the order in original be upheld and /or any other order as deemed fit.

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 were scheduled. Shri R. Kulkarni Superintendent, Customs Mumbai, attended the hearing and reiterated the submissions in the Revision Applications and pleaded that the Order in Appeal be set aside. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided on merits.

7. The Government has gone through the case records. It is observed that the respondent did not declare the gold and it was ingeniously concealed in the socks worn by the first respondent and stuck to the bottom of the second respondents feet with the help of Sanitary napkins inside her shoes. The Respondents had concealed the gold deliberately so as avoiding detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration. The Respondents have blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962 by concealing the gold in order to hoodwink the Customs Officers. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had willfully hidden the gold ingeniously and if they were not intercepted before the exit, the gold would have been taken out without payment of customs duty.

8. The above acts have therefore rendered both the Respondents 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 penalty. The impugned Revision Application is therefore liable to be upheld and the order of the Appellate authority is liable to be set aside.

9. Accordingly, The impugned Order in Appeal No. MUM-CUSTOM-PAX-APP-498-15-16 dated 23.11.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III is set aside. The order of the Original Adjudication authority is therefore upheld as legal and proper.

10. Revision application is accordingly allowed.

11. So, ordered.



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

ORDER No. ⁹³¹/2018-CUS (WZ) /ASRA/MUMBAI

DATED 31.10.2018

To,

1. The Commissioner of Customs,
~~Custom House, Mumbai~~
~~Rajaji Sadai,~~
~~Tiruchiyappalli.~~
2. Shri Nitin P. Malde
3. Smt. Sangita N. Malde
C/o Shri Prakash Shigrani, Advocate
Himalaya House,
123 Next to Haj House,
CST, Mumbai - 400 001

Copy to:

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