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SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 380/160/B/16-RA

Date of Issue 29.11.2010

ORDER NO. ⁹³²72018-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 : Shri Abid Hussain Ali Mohamed Mukabbir

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-149-16-17 dated 19.07.2016 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-149-16-17 dated 19.07.2016 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Abid Hussain Ali Mohamed Mukabbir, at the CSI Airport, Mumbai on 02.02.2015 after clearing himself from the green channel. Examination of his person resulted in recovery of a 8 gold bars totally weighing 932 grams valued at Rs. 23,32,220/- (Rupees Twenty three Lakhs Thirty two Thousand and two hundred and twenty). The gold bars were recovered from the shoes worn by the Respondent.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/181/2015-16 dated 12.10.2015 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. 2,30,000/- under Section 112 (a) 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-149-16-17 dated 19.07.2016, allowed the gold to be redeemed on payment of Rs. 4,00,000/- as redemption fine along with the penalty of Rs. 2,30,000/- already imposed and partially allowed the appeal of the Respondent.

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 indicates from the shoes of the Respondent reveal that the concealment was ingenious and premediated with a clear intention to evade duty; The Passenger has failed to make a true declaration; The passenger deliberately opted for the green channel inspite of carrying dutiable goods; The Passenger has admitted to have

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concealed the gold to gain monetarily after selling the gold in the market; The case laws cited by the Appellate order do not apply to the instant case; The passenger had concealed the gold with the express intention of evading duty and failed to fulfill the conditions for importing gold; The adjudicating authority is correct in ordering absolute confiscation of the gold and the same is supported by decisions of the Supreme Court; releasing the gold on redemption fine depends on the facts and circumstances of the case and is not binding as a precedent; Had the passenger not been intercepted he would have succeeded in smuggling the gold; The Commissioner (Appeals) has erred in granting release of the gold under section 125 of Customs Act, 1962 in the present case when the gold were concealed in the shoes with an intent of smuggling.

5.2 The revision Applicant 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 hearings 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 shoes worn by the passenger. The Respondent has 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. In this case the Respondent has 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 Respondent had willfully taken part in the smuggling operation and if he was not intercepted before the exit, the gold would have been taken out without payment of customs duty.

8. 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 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-CUSTM-PAX-APP-149-16-17 dated 19.07.2016 passed by the Commissioner of Customs (Appeals), Mumbai-III is set aside. The order of the Original Adjudicating authority is therefore upheld as legal and proper.

10. Revision application is accordingly allowed on terms mentioned supra.

11. So, ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁹³²/2018-CUS (WZ) /ASRA/MUMBAI

DATED 31.10.2018

To,

1. The Commissioner of Customs,
~~Customs House, Mumbai~~
~~Rajaji Salai,~~
~~Tiruchirappalli.~~
2. Shri Abid Hussain Ali Mohamed Mukabbir
24/26, Mirza Ali Street,
Abbas Bldg., 1st Floor, Room No. 19,
Imamwada Road, Mumbai -400 009..

Copy to:

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