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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. 380/34/B/16-RA

18/8

Date of Issue

29.11.2018

ORDER NO. 933/2018-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 : Shri Rajeev Sachidanandan Menon

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-468-15-16 dated 2.11.2015 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-468-15-16 dated 2.11.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Rajeev Sachidanandan Menon at the CSI Airport, Mumbai on 03.06.2015 on the basis of profiling. Examination of his baggage resulted in recovery of two gold bars totally weighing 2000 grams valued at Rs. 49,26,340/- (Rupees Forty Nine Lakhs Twenty six thousand and Three hundred and Forty). The gold bars were recovered from the shorts worn inside the jeans by the Respondent.

3. After due process of the law vide Order-In-Original No. JC/RR/ADJN/171/2015-16 dated 30.09.2015 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. 5,00,000/- 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-468-15-16 dated 12.11.2016, allowed the gold to be redeemed on payment of Rs. 7,50,000/- as redemption fine and upheld the penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) 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, which was concealed in the shorts worn by the Respondent beneath his jeans. The concealment was ingenious and premediated with a clear intention to evade duty; The Passenger has 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 Commissioner (Appeals) has erred in granting release of the gold under section 125 of Customs Act, 1962 as this is the discretionary power of the Adjudicating Authority and depends on the facts and circumstances of the case after examining the merits; The Passenger has admitted to have concealed the gold and to the non-declaration; Such acts of misusing the liberalized facilitation should be meted out with exemplary punishment; the Respondent did not declare the gold on his own and the gold was detected only after he was intercepted; Had the passenger not been intercepted he would have

succeeded in smuggling the 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 after examining the merits; ; The Commissioner (Appeals) has erred in granting release of the gold for re-export under section 125 of Customs Act, 1962 and is bad in law.

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 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 gold was recovered from the shorts worn by the Respondent inside the jeans worn by him and it does not appear to have been indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. There are no allegations that the Respondent had tried to use the green channel. There are no allegations that the respondent was involved in similar offences earlier. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant.

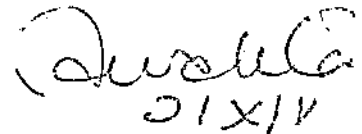
8. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. The Respondent had concealed the gold in his shorts worn inside his jeans and though it was not concealed ingeniously, he did not declare it

and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore needs to be modified.

9. The impugned Order in Appeal is set aside. The Government allows redemption of the gold, totally weighing 2000 grams valued at Rs. 49,26,340/- (Rupees Forty Nine Lakhs Twenty six thousand and Three hundred and Forty). The redemption fine of Rs. 7,50,000/- (Rupees Seven lakhs Fifty thousand) is increased to Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty of Rs.5,00,000/- (Rupees Five lakhs) imposed under section 112(a) of the Customs Act,1962.

10. Revision application is disposed off on terms supra.

11. So, ordered.



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

ORDER No. ⁹³³/2018-CUS (WZ) /ASRA/MUMBAI

DATED 31.10.2018

To,

1. The Commissioner of Customs,
Custom House,
Rajaji Salai,
Tiruchirappalli.
2. Shri Rajeev Sachidanandan Menon
Thekkathiruthil House,
South Kondazhy P.O.,
Dist : Thrissur,
Kerala 679106.

Copy to:

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