



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

F.No. 380/33/B/16-RA / 2184 Date of Issue 29.11.2018

ORDER NO. 936/2018-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 Syed Mohamed Raza

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-486-15-16 dated 16.11.2015 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-486-15-16 dated 16.11.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Syed Mohamed Raza at the CSI Airport, Mumbai on 14.01.2014 after he cleared himself through the green channel. Examination of his person resulted in recovery of gold buckle and greyish silver buttons totally weighing 444 grams valued at Rs.13,40,880/- (Rupees Thirteen lakhs Forty thousand and Eight hundred and Eighty). The gold buckle attached to a leather belt and the buttons were sewn on the jeans worn by the Respondent.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/95/2014-15 dated 28.11.2014 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. 1,20,000/- 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-486-15-16 dated 16.11.2015, allowed the gold to be redeemed on payment of Rs. 2,20,000/- as redemption fine and upheld the penalty of Rs. 1,20,000/- 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, which was concealed as black gold buckle attached to a leather belt and gold buttons were sewn on the jeans worn by the Respondent; The Passenger has admitted to have converted the gold into buckle and buttons so as to conceal the gold and to the non-declaration of these items; The concealment was ingenious and premediated with a clear intention to evade duty; The Passenger has failed to make a true declaration; The manner of concealment being clever and ingenious coupled with the facts that the passenger is not eligible to import gold is a fit case for absolute confiscation; 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

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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;

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.

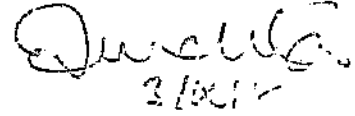
6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearings in the case were scheduled. Shri R. Kulkarni Superintendent, Customs Mumbai, attended the hearing and 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 being disguised as a buckle of a belt holding the jeans and the buttons were recovered from the jeans , though this indicates concealment the government would not prefer to call it an ingeniously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. There are no allegations that the respondent was involved in similar offences earlier. 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 444 grams valued at Rs.13,40,880/- (Rupees Thirteen lakhs Forty thousand and Eight hundred and Eighty). The redemption fine of Rs. 2,20,000/- (Rupees Two lakhs Twenty thousand) is increased to Rs.5,00,000/- (Rupees Five lakhs) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty of Rs.1,20,000/- (Rupees One lakh Twenty thousand) imposed under section 112(a) of the Customs Act,1962. The penalty imposed is appropriate.

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. ⁹³⁶/2018-CUS (WZ) /ASRA/MUMBAI.

DATED 31.10.2018

To,

1. The Commissioner of Customs,
Custom House,
Rajaji Salai,
Tiruchirappalli.
2. Shri Syed Mohamed Raza
I K Main Road, Alipur Village,
Post Gowribidanur Tal,
Chikballapur 561 224.

Copy to:

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