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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. 380/45/B/16-RA

4/2018

Date of Issue 29.11.2018

ORDER NO. 937/2018-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 Mohamed Nisthar Dawood Lebbe

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-572-15-16 dated 06.01.2016 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-572-15-16 dated 06.01.2016 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Mohamed Nisthar Dawood Lebbe, a Sri Lankan citizen at the CSI Airport, Mumbai on 06.07.2014 after clearing himself from customs at the green channel. Examination of his baggage resulted in recovery of a 5 cut gold pieces totally weighing 1000 grams valued at Rs. 25,72,280/- (Rupees Twenty Five Lakhs Seventy two Thousand and two hundred and Eighty). The gold pieces were recovered from a cavity made in a magazine carried by the Respondent.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/200/2015-16 dated 13.10.2015 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. 2,50,000/- 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-572-15-16 dated 06.01.2016, allowed the gold to be redeemed for re-export on payment of Rs. 2,00,000/- as redemption fine and upheld 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, concealed in the cavity made in a magazine carried by 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 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 he also 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 for re-export under section 125 of Customs Act, 1962 as this is the discretionary power of the Adjudicating Authority; The Commissioner (Appeals) order allowing illegally imported gold for re-export to a foreign national 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 respondent did not declare the gold and it was ingeniously concealed in a cavity made in a magazine carried by the passenger. The Applicant is clearly aware of Indian law and therefore 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. 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 hidden the gold ingeniously 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-CUSTOMS-PAX-APP-572-15-16 dated 06.01.2016 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 on terms mentioned supra.

11. So, ordered.



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

ORDER No. ⁹³⁷/2018-CUS (WZ) /ASRA/MUMBAI . DATED 31.10.2018

To,

1. The Commissioner of Customs,
(Signature), Mumbai
2. Shri Mohamed Nisthar Dawood Lebbe
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.