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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. 380/97-A/B/16-RA

2181

Date of Issue 29.11.2018

ORDER NO. 939/2018-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 : The Principal Commissioner of Customs, CSI Airport, Mumbai.

Respondent : Shri Riyaz Hussain.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-684-15-16 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This revision application has been filed by Principal Commissioner of Customs, CSI Airport, Mumbai (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-684-15-16 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

2. Based on suspicious movements, the passenger, Shri Riyaz Hussain (herein referred to as "the respondent") was intercepted by the officers of Air Intelligence Unit at the CSI Airport, Mumbai on his arrival by the Air India Flight No. AI 331 from Bangkok on 07.03.2014. During the personal search of the respondent, one white coloured self adhesive cellophane tape with black carbon paper concealed in his underwear was recovered. The said packet was cut and open and one cut piece of gold bar was found in the same. The said one cut piece was embossed as "SUISSE 1 KILO" and weighed 489 gms . The value of the said gold piece weighing 489 gms was appraised at Rs.13,12,770/- (Rupees Thirteen Lakh Twelve Thousand Seven Hundred Seventy Only). The Customs officers seized said one cut piece of gold under the reasonable belief that the same were smuggled into India and hence liable to confiscation under the provisions of the Customs Act. The respondent stated that his friend Shri Zahir had given him the impugned gold at Bangkok on 07.03.2014 and asked him to hand over the same to the person waiting outside Airport. Shri Zahir promised him to pay Rs. 15,000/- for the same. The details of the person who was to collect it outside Airport would have been given to him by Shri Zahir.

3. After due process of the law vide Order-In-Original No. JC/RR/ADJN/121/2015-16 dated 30.07.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold weighing 489 gms valued at Rs. 13,12,770/- under Section 111 (d), (l) & m of the Customs Act, 1962, absolute confiscation of packing material used for concealing the gold. The Adjudicating Authority also imposed penalty of Rs.

1,25,000/- under Section 112 (a) & (b) of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In- MUM-CUSTM-PAX-APP-684-15-16 dated 29.02.2016 gave option to the respondent to redeem the gold on payment of redemption fine of Rs. 2,00,000/-. The Appellate Authority upheld the penalty of Rs. 1,25,000/- imposed by the adjudicating authority.

5. Aggrieved with the above order the Department has filed this revision application on the grounds that the option to redeem the seized goods under Section 125 of the Customs Act, 1962 is the discretionary power of the Adjudicating Authority depending on the facts of each case and after examining the merits.

6. The Department requested to set aside the impugned order in appeal and upheld the order in original.

7. A personal hearing in the case was held on 01.10.2018, Shri R.P. Kulkarni, Superintendent attended the hearing on behalf of the Department. He re-iterated the submissions filed in Revision Application.

8. The Government has gone through the case records and it is seen that the respondent arrived at the CSI Airport on 07.03.2014 and was intercepted by the Customs Officers and examination his baggage resulted in the recovery of one piece of gold weighing 489 gms valued at Rs. 13,12,770/- ingeniously concealed in the underwear worn by him wrapped in white tape / carbon paper.

9. The Original Adjudicating Authority absolutely confiscated 489 gms. of gold valued at Rs. 13,12,770/- under Section 111 (d), (l) & (m) of the Customs Act, 1962 and packing material used for concealing the gold under Section 119 of Customs Act, 1962. A penalty of Rs. 1,25,000/-- under Section 112(a) & (b) of the Customs Act, 1962 was imposed on the respondent. The Commissioner of Customs (Appeals), Mumbai vide his

Order-In-Appeal MUM-CUSTOM-PAX-APP-684-15-16 dated 29.02.2016 gave option to the respondent to redeem the goods on payment of redemption fine of Rs. 2,00,000/-. The Appellate Authority upheld the penalty of Rs. 1,25,000/- imposed by the adjudicating authority.

10. The Government notes that the respondent has ingeniously concealed one piece of gold weighing 489 gms in the underwear worn by him wrapped in white tape / carbon paper with the clear intent not to declare it to the Customs Officers and to clear them clandestinely without declaration and without payment of Customs duty. Filing true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger. In the instant case, the respondent, on his arrival at Airport, was asked by the Customs Officers as to whether he was carrying any gold / gold jewellery or crude gold in his baggage or on his person to which he replied in the negative. Further, the respondent had filled up the declaration slip with blank at Col. No. 6. The act on the part of respondent clearly shows his intention to clear the impugned gold without payment of Customs Duty.

11. The Government also finds that the respondent in the instant case is not an "eligible passenger" as per the explanation to the Notification No. 31/2003-Cus dated 01.03.2003 and hence not eligible to import gold.

12. It is evident that the respondent has contravened the provisions of Customs Act, 1962. Therefore, the seized gold is liable for absolute confiscation under the provisions the Customs Act, 1962 as the respondent has deliberately concealed the seized gold to avoid detection and to dodge the Customs Authorities and smuggle out the same without payment of appropriate duty. This clearly indicate *mens-rea*, the respondent had no intention of declaring the impugned gold to the authorities and if he was not intercepted before the exit, the respondent would have taken out the impugned gold without payment of Customs duty. This aspect was not taken into consideration by the appellate authority while deciding the case. Therefore, the Government holds that the original adjudicating authority has rightly confiscated the

impugned gold absolutely and the Order in Appeal passed by the Commissioner (Appeals) vide order No. MUM-CUSTOM-PAX-APP-684-15-16 dated 29.02.2016 is liable to be set aside.

13. Taking into consideration the forgoing discussion, Government sets aside the Order in Appeal No. MUM-CUSTOM-PAX-APP-684-15-16 dated 29.02.2016 and upholds the Order in Original No. JC/RR/ADJN/121/2015-16 dated 30.07.2015 .

14. The Revision Application is allowed in terms of above.

15. So, ordered.



(ASHOK KUMAR MEHTA)

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

ORDER No. ⁹³⁹939/2018-CUS (WZ) /ASRA/MUMBAI DATED 31.10.2018

To,

1. The Principal Commissioner of Customs,
T-2, C.S.I. Airport, Mumbai – 400 099.
2. Shri Riyaz Hussain,
C/o Shri P.K. Shingrani, Advocate,
New MIG Colony,
12/334, 6th floor, Vivek Behind P.F. Office,
Bandra (East), Mumbai – 400 051.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai – Zone-III.
2. Shri P.K. Shingrani, Advocate, New MIG Colony, 12/334, 6th floor, Vivek Behind P.F. Office, Bandra (East), Mumbai – 400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.