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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. 380/43/B/WZ/2016 -RA

943

Date of Issue

30.11.2018

ORDER NO. 943 /2018-CUS (W Z) / ASRA / MUMBAI/ DATED 14.11.2018
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 : Principal Commissioner of Customs, CSIA, Mumbai.

Respondent: Shri Mohammed Habeebullah.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-474-15-16 dated 12.11.2015
passed by the Commissioner of Customs (Appeals),
Mumbai Zone-III.



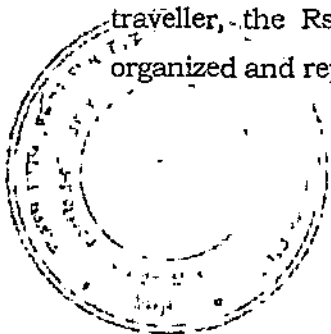
ORDER

This revision application has been filed by Commissioner of Customs, CSIA, Mumbai (herein referred to as Applicant) against the Order in Appeal No MUM-CUSTM-PAX-APP-474-15-16 dated 12.11.2015 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. The issue in brief is that, on 23.08.2015 Shri Mohammed Habeebullah arrived at the CSI Airport, Mumbai from Dubai flight No. 9W-543. The Custom officer of Baggage Screening Machine (BSM) diverted the baggage of the Respondent while he was clearing himself through Green Channel. On examination of his baggage, resulted in recovery and seizure of 28 cartons of Gudam Garam cigarettes and 50 cartons of Black cigarettes both together valued at Rs. 92,000/- which were not declared by the Respondent and there were no pictorial warning on the said cigarettes cartons.

3. After due process of the law, the Additional commissioner of Customs, CSIA, Mumbai vide Order-In-Original No. Air Cus/49/T-2/398/2015 'A' batch dated 23.08.2015, ordered absolute confiscation of the detained cigarettes cartons valued at Rs. 92,000/- (Rupees Ninety Two Thousand Only) since there was no pictorial warning as mandated under Cigarettes and Other Tobacco Products (Packaging & Labelling) Rules, 2008 and the goods were being bonafide baggage, as well as the fact that the Respondent was a frequent traveller and had returned after a short visit of 8 days. He also imposed penalty of Rs. 12,000/- (Rupees Twelve Thousand Only) on the Respondent.

4. Aggrieved by the said order, the Respondent filed appeal before the Commissioner of Customs (Appeals), Mumbai Zone-III. who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-474-15-16 dated 12.11.2015 allowed re-export of the impugned goods on payment of redemption fine of Rs. 50,000/- (Rupees Fifty Thousand Only) and upholding the penalty Rs. 12,000/- (Rupees Twelve Thousand imposed on the Respondent, mainly on the ground that there was no prohibition in import of cigarettes and that the rate of Basic Customs Duty on cigarettes is only 60% and though is a case of systemic smuggling and the Respondent was a frequent traveller, the Rs. 50,000/- fine was imposed as a deterrent to discourage organized and repeated attempts at smuggling.



5. Aggrieved with the above order, the Applicant has filed a Revision Application on the following grounds :

5.1 The Respondent had failed to make a true declaration in the Customs Declaration Form of the contents of his baggage to Customs as required under Section 77 of the Customs Act, 1962 .

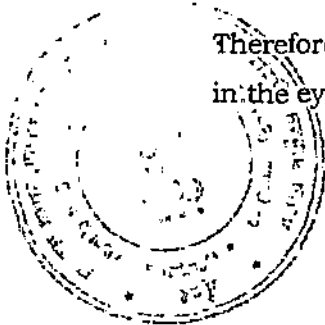
5.2 The Respondent did not declare the said cigarettes to the Customs on his own and the same was detected only after his baggage was diverted by Custom Officer of BSM and his baggage search was conducted. Since Section 80 of the Custom Act says that where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77 *ibid*, the proper officer may, at the request of the passenger, detain such article for purpose of being returned to him on his leaving India. In this case the Respondent had not declared the same on his arrival, therefore the Commissioner(Appeals) order to redeem the goods is not proper.

5.3 In the present case, the Respondent is a frequent traveler and is aware of the Rules and regulations and is a fit case for Absolute confiscation as a deterrent to passenger mis-using the facility of Green Channel and should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law need to be invoked. Hence the Commissioner(Appeals) ought not to have allowed redemption of the impugned goods. The same should have been confiscated absolutely . Therefore the Commissioner(Appeals) order is not proper from this aspect.

5.4 In this regard, the redemption fine and penalty shall depend on the facts and circumstances and other cases cannot be binding as a precedent. In this they relied on the judgment of Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India [1987 (29) ELT 753] wherein the Court has observed

"....the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports..."

Therefore, on this ground alone the Commissioner(Appeals) order is ~~not proper~~ in the eyes of law



5.5 Therefore, prayed that the impugned Order-in-Appeal may be set aside and the Order-in-Original be upheld.

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 hearing in the case was held 01.10.2018. Shri R.P.Kulkarni, Superintendent, Review Cell, CSIA, Mumbai appeared on behalf of the Applicant. The Applicant reiterated the submission made in Revision Application and pleaded that the Order-in-Appeal be set aside and Revision Application be restored. However, the Respondent did not attend the same. Hence a 2nd Personal Hearing was held on 30.10.2018/06.11.2018 and here also the Respondent nor his representative attended the same.

7. The Government has gone through the facts of the case. It is a fact that the gold bars were not declared by the Respondent as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. It is observed that though the Respondent had carried the cigarettes in his baggage, the same was not declared by him and therefore the confiscation of the gold is justified. However, the cigarettes were not indigenously concealed. Import of cigarettes is not restricted or prohibited. There are no instances of any previous offences recorded against the Respondent. 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 Respondent. The absolute confiscation in such cases appears to be a harsh option and not justified.

9. Further, 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 goods 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 goods to re-export the goods on redemption fine and penalty.



10. Government is of the opinion that the redemption fine and penalty imposed by the Order in Appeal to be appropriate and therefore the impugned Order-in-Appeal needs to be upheld and the Revision Application is liable to be dismissed .

11. The Government therefore upholds the order of the Commissioner (Appeals) No. MUM-CUSTM-PAX-APP-474-15-16 dated 12.11.2015. Revision application is accordingly dismissed.

12. So, ordered.

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

ORDER No. 943/2018-CUS (WZ) /ASRA/MUMBAI DATED 14.11.2018

To,

1. The Commissioner of Customs
CSI Airport,
Mumbai
2. Shri Mohammed Habeebullah,
A-Zuraira Manzil, Mullacherry,
P.O. Bare, Kasaragod Distt.
Kerala - 671 319.

Copy to:

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

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

