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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. 380/87-A/B/16-RA | 22

Date of Issue 30.11.2018

ORDER NO. 944/2018-CUS (WZ) / ASRA / MUMBAI DATED 16.11.2018 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 : The Principal Commissioner of Customs, CSI Airport, Mumbai.

Respondent : Shri Mohamed Ali Abdulla Kadar.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-676-15-16 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-676-15-16 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

2. Based on suspicious movements, the passenger, Shri Mohamed Ali Abdulla Kadar (herein referred to as "the respondent") was intercepted by the officers of Air Intelligence Unit at the CSI Airport, Mumbai on his arrival by Flight No. 9W-543 from Dubai on 15.05.2015. During the personal search of the respondent, the Customs Officers recovered two yellow gold rods purported to be gold were recovered from baby walker. The Government appointed registered valuer identified the said rods to be 24 karat gold weighing 232 gms valued at Rs. 5,93,720/- (Rupees Five Lakh Ninety Three Thousand Seven Hundred Twenty Only). The Customs officers seized the impugned gold bars under the reasonable belief that the same were smuggled into India and hence liable to confiscation under the provisions of the Customs Act.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/191/2015-16 dated 23.09.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold weighing 232 gms valued at Rs. 5,93,720/- under Section 111 (d), (l) & m and the brown cello tape used for concealing gold under Section 119 of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 60,000/- 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-Appeal No. MUM-CUSTOM-PAX-APP-676-15-16 dated 29.02.2016 gave option to the respondent



to redeem the gold on payment of redemption fine of Rs. 90,000/-. The Appellate Authority upheld the penalty of Rs. 60,000/- 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 show cause notice was issued to the respondent on 11.11.2016. A personal hearing in the case was held on 01.10.2018, 30.10.2018 & 06.11.2018. Shri R.P. Kulkarni, Superintendent attended the hearing on behalf of the Department on 01.10.2018. He re-iterated the submissions filed in Revision Application. The respondent did not appear for personal hearing so fixed.

8. The Government has gone through the case records and it is seen that the respondent arrived at the CSI Airport on 15.05.2015 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of two gold rods ingeniously concealed in a baby walker. The impugned gold was totally weighing 232 gms valued at Rs. 5,93,720/- .

9. The Original Adjudicating Authority absolutely confiscated 232 gms. of gold valued at Rs. 5,93,720/- under Section 111 (d), (l) & (m) of the Customs Act, 1962 and a penalty of Rs. 60,000/- 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 No. MUM-CUSTOM-PAX-APP-676-15-16 dated 29.02.2016 gave option to the respondent to redeem the goods on payment of



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redemption fine of Rs. 90,000/-. The Appellate Authority upheld the penalty of Rs. 60,000/- imposed by the adjudicating authority.

10. The Government notes that the respondent has ingeniously concealed two gold rods of 24 karat in baby walker totally weighing 232 gms valued at Rs. 5,93,720/- 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. The act on the part of respondent clearly shows his intention to clear the impugned gold without payment of Customs Duty.

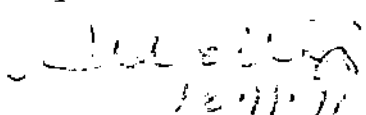
11. It is evident that the respondent has contravened the provisions of Customs Act, 1962. Therefore, the seized gold is liable for absolute confiscation under the provisions the Customs Act, 1962 as the respondent has deliberately concealed the seized gold to avoid detection and to dodge the Customs 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-676-15-16 dated 29.02.2016 is liable to be set aside.



12. Taking into consideration the forgoing discussion, Government sets aside the Order in Appeal No. MUM-CUSTOMS-PAX-APP-676-15-16 dated 29.02.2016 and upholds the Order in Original No. ADC/RR/ADJN/191/2015-16 dated 23.09.2015.

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

14. So, ordered.


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

ORDER No. ⁹⁴⁴/2018-CUS (WZ) /ASRA/MUMBAI DATED 16.11.2018

To,

1. The Principal Commissioner of Customs,
T-2, C.S.I. Airport, Mumbai – 400 099.
2. Shri Mohamed Ali Abdulla Kadar.
F-Sector, E-2, Line, Room No. 7,
Cheeta Camp, Trombay,
Mumbai.

Copy to:

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



ATTESTED


30.11.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)