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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)  
8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 380/32/B/2016 -RA

32/11

Date of Issue 20.11.2018

ORDER NO. 957 /2018-CUS ( WZ) / ASRA / MUMBAI/ DATED 12.11.2018  
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 Mir Kamil Hasan Raza.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-477-15-16 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-477-15-16 dated 12.11.2015 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. The issue in brief is that, on 08.04.2014 Shri Mir Kamil Hasan Raza arrived at the CSI Airport, Mumbai from Bangkok flight No. AI-331. After he cleared through customs Green Channel, the Respondent was intercepted by the Air Intelligence Unit (AIU). In the Custom Declaration Form, he had declared the value of imported goods as blank. Further personal search of the Respondent resulted into recovery of three cut pieces of gold bars which was concealed in the artificial pocket of his underwear and artificial pocket of the jeans worn by him. The total pieces of the gold bars recovered from the Respondent was 600 gms and collectively assessed at Rs. 15,26,967/- was seized under panchanama dated 09.04.2014. Respondent in his statement dated 09.04.2014 stated that the three cut pieces gold bars had been given to him by one person named Siraj in Bangkok and he arranged for his travel from Mumbai and back, and for a monetary consideration of Rs. 10,000/- he concealed the gold to evade the duty and he was aware that carrying gold and declaring the same and evading duty is an offence punishable under Customs laws and also admitted carriage, possession and recovery of the gold bars concealed in his under wear.

3. After due process of the law, the Additional commissioner of Customs, CSIA, Mumbai vide Order-In-Original No. ADC/ML/ADJN/17/2015-16 dated 30.04.2015, ordered absolute confiscation of the seized gold i.e. 03 cut pieces of gold totally weighing 600 gms and valued at Rs. Rs. 15,26,967/- (Rupees Fifteen Lakhs Twenty Six Thousand Nine Hundred and Sixty Seven Only) under Section 111 (d) (l) and (m) of the Customs Act, 1962, imposed penalty of Rs. 1,50,000/- (Rupees One Lakhs Fifty Thousand Only) under Section 112 (a) and (b) of the Customs Act, 1962 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-1121/17-18 dated 13.03.2018 allowed redemption of



the gold on payment of redemption fine of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only) and penalty of Rs. 1,50,000/- (Rupees One Lakhs Fifty Thousand Only) under Section 112 (a) and (b) of the Customs Act, 1962 imposed on the Respondent in the Order-in-Original dated 30.04.2015 was upheld.

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

- 5.1 The Respondent cleverly concealed the three cut pieces of gold bars in the artificial pocket of his underwear and in the artificial pockets of the jeans worn by him and did not declare it to avoid payment of Customs duty. The passenger had opted for Green Channel for Customs clearance without declaring the aforesaid items to the Customs and in the column for declaration of value of imported goods in his Custom Declaration Form was shown as blank. The 03 cut pieces of gold totally weighing 600 gms and valued at Rs. Rs. 15,26,967/- was smuggled into India in contravention to the provisions of the Customs Act, 1962 and hence liable to confiscation under the provision of the Customs Act, 1962 .
- 5.2 The Respondent declared the "Total value of dutiable goods being imported "at column no.9 of the Declaration form as "blank". Hence he 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 .
- 5.3 The Respondent did not declare the said gold to Customs on his own and the same was detected only after he was diverted by AIU and personal search was conducted. The manner in which gold was imported by ingeniously concealing in his underwear and artificial pockets of the jeans worn by him showed his criminal bent of mind and a clear intention to evade duty on goods and smuggle the same into India. Had the Respondent not been intercepted, he would have made good with the gold ingeniously concealed and such acts of mis-using the liberalized facilitation process 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(Appeal) ought not to have allowed redemption of the impugned gold. The same should have been confiscated absolutely. Therefore, the Commissioner(Appeal) 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 as the Commissioner(Appeals) had not mentioned that the goods in question was recovered from the underwear and artificial pockets of the jeans worn by the Respondent which falls under the ambit of ingenious concealment.

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 Rajkumar Kulkarni, Superintendent, Review Cell, CSIA, Mumbai appeared on behalf of the Applicant.. The Applicant reiterated the contents of Revision Application and pleaded that the Order-in-Appeal be set aside and Order-in-Original be restored. However, the Respondent did not attend the same. Hence a 2<sup>nd</sup> 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. The Government observed that the Respondent cleverly concealed the gold bars in his artificial pocket of his underwear and artificial pockets of the jeans worn by him. The concealment was planned so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration. In this case the Respondent had blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and

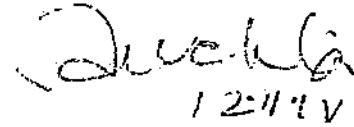


that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted by the AIU custom office before the exit, the Respondent would have taken out the gold without payment of Customs duty. The Order-in-Appeal allowing redemption of the gold, therefore is liable to be set aside.

9. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty. In view of the above the impugned Order-in-Appeal No. MUM-CUSTM-PAX-APP-477/15-16 dated 12.11.2015 is set aside and the Order-In-Original No. ADC/ML/ADJN/17/2015-16 dated 30.04.2015 is upheld as legal and proper.

10. Revision application is allowed on above terms.

11. So, ordered.

  
12.11.15

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

ORDER No. 957/2018-CUS (WZ) /ASRA/MUMBAI DATED 12.11.2018

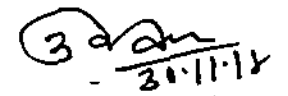
To,

1. The Commissioner of Customs  
CSI Airport,  
Mumbai
2. Shri Mir Kamil Hasan Raza,  
Raj Apt, Flat No. 102,  
1<sup>st</sup> Floor, Near Amir Park,  
Nalasopara West,  
Thane - 401 203.

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**

  
- 20.11.18  
एस. आर. हिरुलकर  
S. R. HIRULKAR

