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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. 380/168-A/B/WZ/2016 -RA

Date of Issue 30.11.2018

ORDER NO. 958 /2018-CUS (W Z) / 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 Nilesh Kumar Jashwanti Ghariwala.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-258-16-17 dated 04.10.2016
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-258-16-17 dated 04.10.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. The issue in brief is that, on 21.10.2014 Shri Nilesh Kumar Jashwantal Ghariwala arrived at the CSI Airport, Mumbai from Dubai flight No. EK-500. After he cleared through customs Green Channel, the Respondent was intercepted by the Air Intelligence Unit (AIU) near the Exit Gate of the airport. In the Custom Declaration Form, he had declared the value of imported goods as blank. Further the Respondent was asked to pass through the Door Frame Metal Detector (DFMD) installed near the Exit Gate of Customs Arrival Hall. When he passed through the DFMD it alerted with a beep sound which indicated the presence of metallic substances on the body of the Respondent. Personal search resulted into recovery of 16 gold bar and 4 cut pieces of gold from the four specially made pockets with chain stitched around the inner side of the waist line of Jeans pant worn by the Respondent. The total pieces of the gold bars recovered from the Respondent was totally 7375 gms and valued at Rs. 1,82,75,725/- (Rupees One Crore Eighty Two Lakhs Seventy Five Thousand Seven Hundred and Twenty Five Only) was seized.

3. After due process of the law, the Additional commissioner of Customs, CSIA, Mumbai vide Order-In-Original No. ADC/RR/ADJN/113/2016-17 dated 17.06.2016, ordered absolute confiscation of the seized gold i.e.4 gold bars of 01 kg, 12 gold bars of 10 tolas and 4 cut pieces of gold bars collectively weighing 7375 gms and valued at Rs. 1,82,75,725/- (Rupees One Crores Eighty Two Lakhs Seventy Five Thousand Seven Hundred and Twenty Five Only) under Section 111 (d) (l) and (m) of the Customs Act, 1962, imposed personal penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs 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-CUSTOM-PAX-APP-258-16-17 dated 04.10.2016 allowed redemption of the gold on payment of redemption fine of Rs.35,00,000/- (Rupees Thirty Five Lakhs Only) and penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs Only) under Section 112 (a)and (b) of the Customs Act,1962 imposed on the Respondent in the Order-in-Original dated 17.06.2016 was however 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 4 gold bars of 01 kg, 12 gold bars of 10 tolas and 4 cut pieces of gold bars collectively weighing 7375 gms and valued at Rs. 1,82,75,725/- in the four specially made pockets with chain stitched around the inner side of the waist line of Jeans pant worn by the Respondent with the help of a black colored leather belt. The passenger had opted for Green Channel for Customs clearance without declaring the aforesaid items to the Customs. The manner of recovery of gold clearly indicates that the concealment was not only ingenious one but also premeditated.
- 5.2 The Respondent while carrying the impugned gold had deliberately and knowingly opted for Green Channel whereas he was supposed to through Red channel and declare the total value of dutiable goods imported by them. 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 impugned gold was collectively weighing 7375 gms and the Adjudicating Authority had had held that such quantity of gold are not casually purchased and not everyone can purchase this quantity and no bonafide passenger would bring gold in this manner. The Respondent had named a person and claimed that he purchased the gold from his credit card but he had not submitted any proof of such



payment. The Invoice was a photocopy and cannot be accepted as genuine document. Whereas the Commissioner(Appeals) has not considered this fact that the Respondent had not submitted any proof of such payment and held that if there was any doubt about the genuineness of invoice, the same could have been verified to rule out any ambiguity. However, the other issue i.e. payment by somebody else is totally neglected by Commissioner(Appeals) and thereby he failed to appreciate the possibility of smuggling concluded by Adjudicating Authority.

- 5.4 The Commissioner (Appeals) referred to a number of judgments in the impugned order which does not apply in the instant case as the Respondent in this case is a carrier who carried the impugned gold for getting monetary benefit for Rs. 20,000/- in addition to the to and fro air tickets and hotel expenses as per his statement dated 22.10.2014 coupled with the fact that the impugned gold was ingeniously concealed in four specially made pockets with chain stitched around the inner side of the waist line of black jeans pant worn by the Respondent.
- 5.5 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 four specially made pockets with chain stitched around the inner side of the waist line of black jeans pant worn by the Respondent which falls under the ambit of ingenious concealment and leads to intent of smuggling and other ulterior motives coupled with the fact that the Respondent



acted as a carrier who carried the impugned gold for getting monetary consideration.

5.6 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 submission made in Revision Application and pleaded that the Order-in-Appeal be set aside and Revision Application be allowed. 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. The Government observed that the Respondent cleverly concealed the 4 gold bars of 01 kg, 12 gold bars of 10 tolas and 4 cut pieces of gold bars collectively weighing 7375 gms and valued at Rs. 1,82,75,725/- in the four specially made pockets with chain stitched around the inner side of the waist line of Jeans pant worn by the Respondent with the help of a black coloured leather belt. 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 Respondent had no intention of declaring the gold to the authorities and if custom officers had not asked him to pass through the Door Frame Metal Detector (DFMD) installed in the Exit Gate near the Customs Area, he would have taken out the gold without



payment of Customs duty have in contravention of the various provisions of the Customs Act, 1962. The Applicant had cleverly concealed the seized gold in specially designed pockets which was covered with black belt. No lenient view is required to be taken in such case. The Order-in-Appeal allowed redemption of the gold, therefore, is liable to be set aside and Order-In-Original passed by Original Adjudicating Authority is liable to be upheld.

9. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs Only). In view of the above the impugned Order-in-Appeal No. MUM-CUSTOM-PAX-APP-258-16-17 dated 04.10.2016 is set aside and the Order-In-Original No. ADC/RR/ADJN/113/2016-17 dated 17.06.2016 is upheld as legal and proper.

10. Revision application is allowed on above terms.

11. So, ordered.

Ashok Kumar Mehta
12/11/18

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

ORDER No. 958/2018-CUS (WZ) /ASRA/MUMBAI DATED 12.11.2018

To,

1. The Commissioner of Customs
CSI Airport,
Mumbai
2. Shri Nilesh Kumar Jashwantial Ghariwala,
R/o Parth Apartments, 2nd Floor,
R.No. 203/204, Behind Alkapuri Society,
Surat - 395 008

ATTESTED

S.R. Hirulkar
30/11/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

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

