

REGISTERED

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. 380/73/B/WZ/2018-RA/5328

Date of Issue 14.09.2020

ORDER NO. 139/2020-CUS (WZ)/ASRA/MUMBAI DATED 13.08.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Pr. Commissioner of Customs, Mumbai.

Respondent : Shri Suresh Kouramal Dingriya

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-200/18-19 dated 28.06.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.



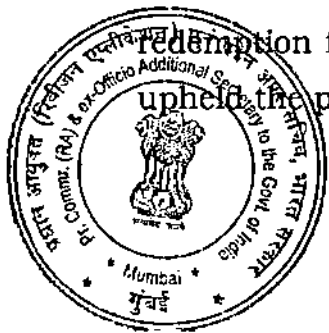
ORDER

This revision application has been filed by Pr. Commissioner of Customs, Mumbai (herein referred to as Applicant) against the order No. MUM-CUSTM-PAX-APP-200/18-19 dated 28.06.2018 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that on the basis of intelligence the Respondent, who had arrived from Singapore on 25.07.2014 was intercepted after he had cleared the Green Channel. On being asked he denied carrying gold or any contraband. The examination of the handle of the trolley carried by the respondent revealed that some metal was affixed with blue and black cello tape to avoid detection. A detailed examination of handle resulted in the recovery of 10 gold bars totally weighing 1000 grams of Rs. 25,79,750/- ( Rupees Twenty five Lakhs Seventy Nine thousand Seven hundred and Fifty ) from the handle of the trolley.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/241/2015-16 dated 29.12.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (i) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 2,50,000/- ( Rupees Two lacs Fifty thousand ) under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by this order the Respondents filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. MUM-CUSTM-PAX-APP-200/18-19 dated 28.06.2018 set aside absolute confiscation and allowed redemption of the gold on payment of redemption fine of Rs. 4,50,000/- ( Rupees Four lacs fifty thousand ) and upheld the penalty imposed.



5. Aggrieved with the above order the Applicant department, has filed this revision application interalia on the grounds that;

5.1 The Passenger had failed to make a declaration as required under section 77 of the Customs Act,1962; The Respondent in his statement recorded on 26.07.2014 stated that the gold recovered does not belong to him and one person by name Mr. Mehta hand given him the gold to be handed over to a person in Mumbai. That as instructed by Shri Mehta he attached the packet containing gold bars to the handle of the trolley when waiting for his checked in baggage; The Original Adjudicating authority has specifically observed that the gold bars were found ingeniously concealed by affixing the gold to the handle of the trolley; The method and manner was such that detection required special efforts by the customs officers to recover the gold.; As the passenger by his own admission was a carrier, ie a professional smuggler and was carrying the gold bars only for monetary consideration, it merits absolute confiscation; The circumstances of the case and the act of affixing the packet to the handle revealed the malafide intention of the respondent to avoid the payment of customs duty;

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the impugned Order in Appeal be set aside and the order in original be upheld and /or any other order as deemed fit.

6. Personal hearing in the case was scheduled on 28.11.2019. The advocate for the Applicant Shri N. J. Heera, Advocate appeared for hearing on behalf of the Respondents in his written reply interalia stated that;

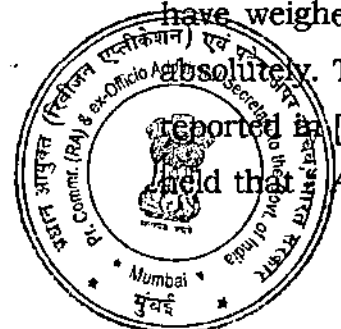
6.1 The impugned order passed by the Appellate Authority is a well-reasoned order and the justification / rationale for permitting redemption of impugned goods to the Respondent is well founded and is based on solid grounds and sound principles of law; The Respondent submits that in the Appeal the Appellant has stated that there was contravention of Section 77 of the Customs Act, 1962, by the



Respondent, It is submitted that due to the reason of contravention of Section 77 of the Customs Act, 1962, the Ld. Appellate Authority has imposed fine and penalty on the Respondent; The Respondent submits that the Ld. Appellate Authority has clearly and rightly expressed the reason for granting the option of redemption of Gold to the Respondent; The Ld. Appellate Authority has correctly discarded the judgements relied upon by the Adjudicating Authority as being inapplicable to this case and entirely different from the facts of the present case; The Respondent submits that it may be kindly appreciated that the Mumbai Commissionerate in similar situations/Cases have permitted the redemption ( Gold under Section 125 of the Customs Act,1962 and therefore the impugned goods in the present case also ought to have been released under Section 125 of Customs Act,1962. The Respondent craves leave to refer and rely upon similar orders in similar cases at the time of hearing.

6.2 The Respondent cited case laws in support of their contention and prayed that the Revision Application be summarily rejected and the impugned Order in Appeal be upheld and /or any other order as deemed fit and proper in the facts and circumstances of the case.

7. The Government has gone through the facts of the case, It is on record that the gold was not declared as mandated under section 77 of the Customs Act,1962. The impugned gold was attached to the handle of the trolley so as to avoid its detection. The respondent has in his statements recorded by the Customs officers has revealed that the gold was given to him by one Shri Mehta to be handed over in Mumbai thus he has denied ownership of the gold. The manner of concealment clearly indicates an attempt to smuggle the gold. The attempt also indicates mensrea and an absolute contempt of the law. Had the Applicant department not intercepted the respondent the gold would have been taken out without payment of customs duty. These aspects have weighed on the original adjudicating authority to confiscate the gold absolutely. The ratio of the judgement in the case of Abdul Razak Vs UOI reported in [2012 (275) ELT 300 (Ker)] the Hon'ble High Court of Kerala has held that Appellant as a matter of right cannot claim release of the goods on



payment of redemption and duty -As per the statement given by the Appellant under section 108 of the Customs Act,1962, he is only a carrier ie professional smuggler smuggling gold on behalf of others for consideration? . The ratio of this judgement is squarely applicable to this case. The impugned gold is therefore liable for absolute confiscation and the Respondent liable for penal action under section 112 (a) of the Customs Act, 1962. The Appellate order therefore errs in allowing the gold to be redeemed on redemption fine. Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalty. The Appellate Order is therefore liable to be set aside.

9. Accordingly, The impugned Order in Appeal No. MUM-CUSTM-PAX-APP-200/18-19 dated 28.06.2018 passed by the Commissioner of Customs (Appeals), Mumbai is set aside. The order of the Original adjudicating authority is upheld.

10. Revision application is disposed of on above terms.

11. So, ordered.

( SEEMA ARORA )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 139/2020-CUS (WZ) /ASRA/

DATED 13.08.2020

To,

1. The Commissioner of Customs, T-2, C.S.I. Airport, Andheri Mumbai-400 099.
2. Shri Suresh Kouramal Dingriya, B.K. 1967/2 OT. Section, Nehru Nagar, Ulhasnagar 5, Thane 421 005.

Copy to:

3. Shri N. J. Heera, Advocate, Nulwala Building, 41 Mint Road, Fort, Mumbai 400 001.

Sr. P.S. to AS (RA), Mumbai.

Guard File.

Spare Copy.

**ATTESTED**

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

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