

REGISTERED
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. 371/47/B/2017-RA(Mum)

F.No. 380/26/WZ/2017-RA(Mum)

Date of Issue

25/10/19

ORDER NO. ¹⁵⁻¹⁶ /2019-CUS (WZ)/ASRA/MUMBAI DATED 30.09.2019 OF THE
GOVERNMENT OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT
OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

F.No. 371/47/B/2017-RA(Mum)

Applicant : Shri Mohammed Yusuf Mohammed Jaffer Gangawali
Respondent : The Commissioner of Customs, Pune

F.No. 380/26/WZ/2017-RA(Mum)

Applicant : The Commissioner of Customs, Pune
Respondent : Shri Mohammed Yusuf Mohammed Jaffer Gangawali

Subject : Revision Applications filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. PUN-CT-
APPII-OOO-89-17-18 dated. 19.07.2017 passed by the
Commissioner (Appeals-II), Central Excise, Pune.

ORDER

The revision application 380/26/WZ/2017-RA(Mum) has been filed by the Commissioner of Customs, Pune against the order in Appeal PUN-CT-APPII-000-89-17-18 dated 19.07.2017 passed by the Commissioner (Appeals-II), Central Excise, Pune. The Revision Application 371/47/B/2017-RA(Mum) has been filed by the passenger Shri Mohammed Yusuf Mohammed Jaffer Gangawali.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Mohammed Yusuf Mohammed Jaffer Gangawali, Indian citizen, at the Pune International Airport, Mumbai on 20.08.2016 after he attempted to pass through the green channel. Screening of his bags showed some incriminating items. Examination of his baggage and person resulted in recovery of gold in wheel, washer form with rhodium coating and gold wire totally weighing 1630.350 grams valued at Rs. 51,35,602/- (Rupees Fifty one Lakhs Thirty five thousand Six hundred and two). The gold was ingeniously concealed in the handles, sides and the wheels of the bags brought by Shri Mohammed Yusuf Mohammed Jaffer Gangawali.

3. After due process of the law vide Order-In-Original No. Pune-CUSTOM-000-ADC/33/2016-17 dated 31.03.2017 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. 5,00,000/- (Rupees Five lacs) under Section 112 (a) and (b) of the Customs Act, 1962. A penalty of Rs. 1,00,000/- (Rupees One lac) was also imposed under section 114AA of the Customs Act, 1962.

4. Aggrieved by this order the Passenger filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order in appeal No. PUN-CT-APPII-000-89-17-18 dated 19.07.2017 allowed the gold to be redeemed on payment of Rs. 10,00,000/- (Rupees Ten lacs) as redemption fine and enhanced the penalty to Rs. 15,00,000/- (Rupees Fifteen lacs) under Section 112 (a) and (b) of the Customs Act, 1962. allowed the appeal of the Passenger.

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

5.1 The order of the Commissioner (Appeals) is not just, legal and proper to the extent of reversing the order of the Adjudicating authority in allowing the passenger to redeem the gold. The case laws relied upon by the Appellate authority appears not to be squarely applicable to the instant case; The Commissioner (Appeals) has

erred by interpreting the section 125 of the Customs Act, 1962 in isolation rather than interpreting it along with other relevant sections; The Commissioner (Appeals) has erred by not interpreting Para 3 of CBEC Circular No. 495/5/92-Cus.VI dated 10.05.1993 in an appropriate manner; The Appellate authority erroneously had given the option to the passenger to redeem the smuggled gold on payment of redemption fine in lieu of confiscation, contrary to Board circulars dated 10.05.1993 and 06.03.2014 and hence the orders need to be set aside.

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. The passenger Shri Mohammed Yusuf Mohammed Jaffer Gangawali has filed this revision application inter alia on the grounds that;

6.1 The order in appeal is not just, legal and proper to the extent of exorbitant fine and penalty; The Commissioner (Appeals) did not consider the notification no. 31/2003 customs dated 01.03.2003 with regard to exemption for eligible passengers who are coming to India after a period of six months; That it is a settled position that reason constitutes the heartbeat of every order and the impugned order is without reason; The only intention behind concealment was to save his life income of the last 24 years he spent working in Saudi Arabia and since the passenger is an NRI he may be considered as a "eligible passenger"; The Revision Applicant cited case laws in support of their contention and prayed that the exorbitant fine and penalty imposed in the impugned Order in Appeal be set aside.

7. In view of the above, a personal hearing in the case was held on 09.09.2019. Shri Vinayak Kalgekar, Advocate attended the hearing and reiterated the submissions in the Revision Applications and pleaded that the redemption fine and penalty imposed is harsh and needs to be set aside. Nobody from the Applicant department attended the hearing.

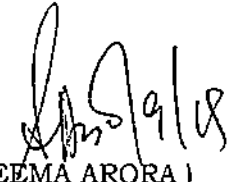
8. The Government has gone through the case records. It is observed that the respondent did not declare the gold and the gold was ingeniously concealed in the handles, sides and the wheels of the bags brought by the passenger. The Passenger had concealed the gold deliberately, so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a mere case of mis-declaration. The passengers contention to be treated as an "eligible passenger" cannot be considered as the foremost requirement of declaration as required under section 77 of the Customs Act, 1962 not made. The concealment of gold was done in such a manner so as to smuggle into India in contravention of the provisions of the Customs, Act 1962 by

the Customs Officers. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had willfully hidden the gold ingeniously and if he was not intercepted before the exit, the gold would have been taken out without payment of customs duty.

8. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalty. The impugned Order in original is therefore liable to be upheld and the order of the Appellate authority is liable to be set aside.

9. Accordingly, The impugned Order in Appeal No. PUN-CT-APPII-000-89-17-18 dated 19.07.2017 passed by the Commissioner (Appeals), Pune is set aside. The order of the Original Adjudication authority is upheld. Government however observes that once penalty has been imposed under section 112(a) and (b) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 1,00,000/- (Rupees One lac) imposed under section 114AA of the Customs Act,1962 is set aside.

10. So, ordered.


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

15-16
ORDER No. /2019-CUS (WZ) /ASRA/

DATED 30.09.2019

To,

1. The Principal Commissioner of Customs (Airport),
Chatrapati Shivaji International Airport, Terminal -2, Mumbai.
2. Shri Mohammed Yusuf Mohammed Jaffer Gangawali.
C/o Shri Vinayak V. Kalgekar, Advocate
742, Guruwar Peth, C/o Rahul Dighe, Pune - 411 042.

Copy to:

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