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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. 380/51/B/15-RA/276

Date of Issue 03/08/2018

ORDER NO. 561/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.07.2018 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 : Commissioner of Customs, Ahmedabad.

Respondent : Shri Manish Kumar N. Kathririya & Shri Arvind Bhai N. Vithani

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHD- CUSTM -000-APP-122 -15-16 and AHD-CUSTM -000- APP-123 -15-16 dated 10.09.2015 passed by the Commissioner of Customs (Appeals), Ahmedabad.



ORDER

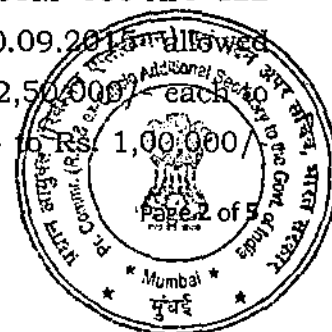
This revision application has been filed by Shri Manish Kumar N. Kathririya & Shri Arvind Bhai N. Vithani (herein referred to as Applicants) against the order no AHD-CUSTM -000-APP-122 -15-16 and AHD-CUSTM -000-APP-123 -15-16 dated 10.09.2015 passed by the Commissioner of Customs (Appeals), , Ahmedabad.

2. Briefly stated the facts of the case are that the applicants, arrived at the Ahmedabad Airport on 31.05.2014. They were both intercepted and examination of the baggage and person of Shri Manish Kumar N. Kathririya resulted in the recovery of jeans which were unusually heavy, further enquiry revealed that the buttons were made of gold. Further examination of some nail polish bottles revealed the presence of concealed gold bits immersed in the nail polish . A total of 601.380 gms valued at Rs. 14,76,115/- ( Rupees Fourteen lakhs Seventy six thousand One hundred and Fifteen).

3. Similarly, the examination of the baggage and person of Shri Arvind Bhai N. Vithani resulted in the recovery of unusually heavy jeans and enquiries revealed that jeans buttons were made of gold. Examination of some nail polish bottles also revealed the presence of gold bits immersed in the nail polish. A total of 586.190 gms valued at Rs. 14,37,396/- ( Rupees Fourteen lakhs Thirty seven thousand Three hundred and Ninety six).

4. After due process of the law vide Order-In-Original No. 83/JC-AK/SVPIA/O&A/2015 dated 14.05.2015 the Original Adjudicating Authority ordered absolute confiscation of the impugned gold brought be both the Applicants under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. also imposed penalty of Rs. 2,50,000/- each, under Section 112 (a) of the Customs Act,1962 on both the Applicants. The Adjudication authority also imposed penalty of Rs. 1,50,000/- each, under Section 114AA of the Customs Act,1962 on both the Applicants.

5. Aggrieved by the said order, the Respondents filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. AHD-CUSTM -000-APP-122 -15-16 and AHD-CUSTM -000-APP-123 -15-16 dated 10.09.2015 allowed redemption of the gold on payment of redemption fine of Rs. 2,50,000/- each both the Applicants and reduced the penalty from 2,50,000/- to Rs. 1,00,000/-



each on both the Applicants, and set aside the penalties imposed under 114AA of the Customs Act,1962 on both the Applicants.

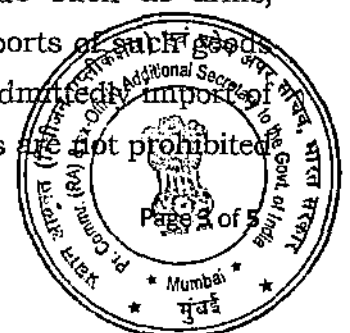
6. The Applicant has filed this Revision Application interalia on the following grounds that;

6.1 Both the orders of the Commissioner (Appeals) are not legal and need to be appeal against; para 11 of the Commissioner Appeals findings that there was no predesigned flagrant attempt to evade duty that as a normal settled law such confiscation is ordered in cases of large scale smuggling, and there is no predesigned flagrant attempt to evade duty; is not correct; as per section 2 (39) of the Customs Act,1962 "smuggling" means any act or omissions which render such goods liable to confiscation under section 111 or section 113; The decisions relied upon by the Commissioner (Appeals) are not applicable to the instant case; The Commissioner (Appeals) has erred in not considering the findings of the adjudicating authority that reasoned why the gold may be confiscated absolutely; The Commissioner (Appeals) has also erred in the order portion that "*I order that the gold seized under section 111(l) and (m) of the Customs Act,1962 maybe released on payment of appropriate duty along with applicable interest*" Section 111(l) and (m) of the Customs Act,1962 pertains to confiscation of improperly imported goods etc, and not seizure of the goods, Provisions of seizure of goods, documents and things are under section 110 of the Customs Act,1962.

6.2 The Revision Applicant prayed for setting aside the order of the Appellate authority, stay the operation of the order in Appeal or any such an order as deemed fit.

7. In view of the above, the Respondent 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 on 18.05.2018, the Advocate for the respondent Shri Prakash Shingarani attended the hearing. In his written reply he interalia submitted that

7.1 The Respondents submit that the gold is not a prohibited item but it is only a restricted item; Prohibition relates to goods such as arms, ammunition or drugs; Section 125 is clear that the imports of such goods would not be a danger to welfare or morals of people; Admittedly import of gold is permitted in certain conditions, and as the goods are not prohibited



goods the goods are not liable for confiscation under the provisions of the Sections 111(d), (l) and (m) of the Customs Act, 1962; Having regard to the above legal position the confiscated goods should be released on payment of fine; Absolute confiscation is only warranted in certain conditions and it has not been brought out in the order in original as to how this case can justify absolute confiscation; As no penal action was initiated under section 11(d) of the Act, it means that the gold imported by the respondents was not considered as prohibited goods. Under the doctrine of stare decisis a lower court must honor the findings of law made by a higher court; the respondents submit that they attempted to smuggle only a small quantity of gold and were not going to make a profit from the transaction; It was a single and solitary incident of an alleged act of smuggling; As the gold was seized within the Customs Area it cannot be termed as smuggled goods.

7.2 The respondent finally submitted that there appears to be no error in the order of the Commissioner (Appeals) and there is no merit in the Revision Application and the order of the Commissioner (Appeals) may be ordered to be implemented.

8. The Government has gone through the facts of the case. A written declaration of gold was not made by the Applicants as required under Section 77 of the Customs Act, 1962 and had they not been intercepted they would have gone without making declaration in contravention of the provisions of the Customs Act, 1962 paying the requisite duty. Government also observes that the Applicants had ingeniously concealed the gold by disguising them as jeans buttons so as to avoid detection and evade Customs duty and smuggle the gold into India. It is also noted that the Applicants have also ingeniously concealed gold bits by immersing them in nail polish liquid. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962 by using this new modus operandi. 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 they were not intercepted before the exit, the Applicants would have taken out the gold pieces without payment of customs duty.

7. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds



that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty. Release of the gold in the order of the Appellate authority makes smuggling an attractive proposition. The Government therefore holds that order of the Commissioner (Appeals) has to be set aside and the original adjudicating authority needs to be upheld. Government also holds that no penalty is imposable under section 114AA of the Customs Act,1962 as this provision is not attracted in baggage cases.

8. The Government therefore sets aside the Order-in-Appeals No. AHD- CUSTM -000-APP-122 -15-16 and AHD-CUSTM -000- APP-123 -15-16 both dated 10.09.2015. The Government upholds the Order in original No. 83/JC-AK/SVPIA/O&A/2015 dated 18.05.2015,passed by the Joint Commissioner of Customs, Ahmedabad. The penalty of Rs. 1,50,000/- (Rupees One lakh Fifty thousand ) imposed under section 114AA has been incorrectly imposed, the penalty is therefore set aside

9. Revision Application is accordingly allowed on the above terms.

10. So, ordered.

*(Signature)*  
30.7.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 561/2018-CUS (SZ) /ASRA/MUMBAI

DATED

30.07.2018

To,

Shri Shri Manish Kumar N. Kathririya &  
Shri Arvind Bhai N. Vithani  
C/o Shri P.K. Shingrani, Advocate.  
12/334, New MIG Colony Bandra ( E),  
Mumbai 400 051.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

**Attested**

*(Signature)*  
31/7/18

एस. आर. हिरुलकर  
S. R. HIRULKAR  
A.C.

