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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 380/18/B/17-RA (Mum) 12/16

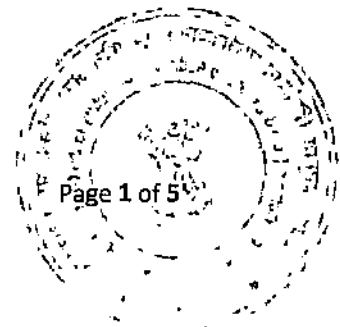
Date of Issue 11.10.2018

ORDER NO. 628/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 17.09.2018  
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 (Airport), Mumbai.

Respondent: Shri Abdul Raziq Bedira Kunhammed

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTOMS-PAX-APP-627/17-18 Dated 12.10.2017  
passed by the Commissioner of Customs (Appeals),  
Mumbai – III.



## ORDER

This revision application has been filed by Commissioner of Customs, Mumbai, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-627/17-18 Dated 12.10.2017 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On the basis of information the officers kept a close watch on the movement of the respondent who arrived at the CSI Airport on 23.04.2015. The Respondent visited the toilet facilities in the arrival hall and concealed two gold bits in the air freshner above the commode. The gold bits totally weighing 1000 gms valued at Rs. 24,30,240/- ( Rupees Twenty four lakhs Thirty thousand Two hundred and Forty) was recovered by the officers. The respondent was then intercepted and in his statement he admitted concealing the gold. The gold was concealed so as to be picked up subsequently and smuggled by some other persons.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/337/2016-17 dated 14.10.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 2,50,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal MUM-CUSTOM-PAX-APP--627/17-18 Dated 12.10.2017 set aside the absolute confiscation of the gold and allowed its redemption on payment of redemption fine of Rs. 4,50,000/-, and upheld the penalty of Rs. 2,50,000/- and partly allowed the appeal of the respondent.

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

5.1 The Order of the Commissioner (Appeals) is neither legal nor proper; In the instant case the passenger visited the toilet facilities and concealed two gold bits in the air freshner above the commode, which was recovered by the customs officers. The concealment was admitted to by the respondent in his statement recorded after the seizure; The passenger failed to make a declaration as required under section 77 of the Customs, 1962, thus rendering the goods as prohibited goods; The concealment



was not only ingenious but also premediated; The manner of concealment being clever and indigenious is a fit case for absolute confiscation as a deterrent punishment for passengers misusing the facility of the green channel; Such acts of misusing the liberalized facilitation and should be meted out with exemplary punishment and deterrent side of the law needs to be invoked; Taking these facts into consideration the Adjudicating authority had rightly confiscated the gold absolutely; Therefore, the order of the Commissioner (Appeals ) is not proper in the eyes of law.

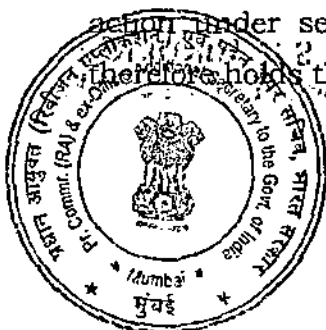
5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority and the order in original be upheld or such an order as deemed fit.

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 scheduled held on 21.02.2018, 31.05.2018 and 16.08.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits.

7. The Government has gone through the case records it is observed that the gold was The gold was concealed in the air freshner above the commode, in the toilet of the arrival hall so as to be picked up subsequently and smuggled into India by some other persons. 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 Applicant has 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 before the exit, the Applicant would have taken out the gold without payment of customs duty.

08/08/2018

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. In view of the above the impugned order in Appeal needs to be set aside.

8. Government therefore sets aside the Order in Appeal no MUM-CUSTOM-PAX-APP-627/17-18 Dated 12.10.2017 passed by the Commissioner of Customs (Appeals), Mumbai-III. The Order-In-Original No. ADC/RR/ADJN/337/2016-17 dated 14.10.2016 issued by the Original Adjudicating Authority is upheld as legal and proper.

9. The Revision Application is allowed on above terms.

10. So, ordered.

*(Signature)*  
17/10/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 678/2018-CUS (WZ) /ASRA/MUMBAI

DATED 17, 08, 2018

To,

1. The Principal Commissioner of Customs (Airport),  
Chatrapati Shivaji International Airport,  
Terminal -2, Mumbai.
2. Shri Abdul Raziq Bedira Kunhammed  
C/o Shri N. J. Heera, Advocate  
Ground Floor, 41, Mint Road,  
Opp GPO,  
Fort, Mumbai-1

Copy to:

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



**ATTESTED**

*(Signature)*  
17/10/18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)