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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. 380/17/B/17-RA (Mum) / 15

Date of Issue 11.10.2018.

ORDER NO. 619/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 10.09.2018  
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 Samu Marikar Mohamed Ibrahim

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTOM-PAX-APP-619/17-18 Dated 10.10.2017  
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-619/17-18 Dated 10.10.2017 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case is that the Respondent applicant arrived at the CSI Airport on 18.01.2014. Examination of his baggage and person resulted in the recovery of a gold bar totally weighing 1000 gms valued at Rs. 26,09,250/- ( Rupees Twenty six Lakhs Nine thousand Two hundred and Fifty ). The gold bar was wrapped in silver foil and stuck to the bottom panel of the front wheel of the baggage trolley with the help of adhesive tapes.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/026/2016-17 dated 22.04.2016 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--619/17-18 Dated 10.10.2017 set aside the absolute confiscation of the gold and allowed its redemption on payment of redemption fine of Rs. 4,75,000/-, 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 screening and personal search of the passenger resulted in the recovery of a gold bar wrapped in silver foil and stuck to the bottom panel of the front wheel of the baggage trolley with the help of adhesive tapes. The passenger failed to make a declaration as required under section 77 of the Customs Act, 1962, thus rendering the goods as prohibited goods; The concealment was not only ingenious but also premediated and clearly establishes mensrea; In his statement the Respondent has admitted that he has acted as a carrier for one Shri Yousef



for a monetary consideration of Rs. 25,000/-. The manner of concealment being clever and indigenous 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 disguised as two wire rods and ingeniously concealed in the inner metallic frame carried as baggage by the respondent. 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.

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-CUSTOMS-PAX-APP-619/17-18 Dated 10.10.2017 passed by the Commissioner of Customs (Appeals), Mumbai-III. The Order-In-Original No. ADC/RR/ADJN/026/2016-17 dated 22.04.2016 issued by the Original Adjudicating Authority is upheld as legal and proper.

9. The Revision Application is allowed on above terms.

10. So, ordered.

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

ORDER No. 679/2018-CUS (WZ) /ASRA/MUMBAI

DATED 10.08.2018

To,

1. The Principal Commissioner of Customs (Airport),  
Chatrapati Shivaji International Airport,  
Terminal -2, Mumbai.
2. Shri Samu Marikar Mohamed Ibrahim  
117/A, Appapally Street,  
Kayalpatnam,  
Tamil Nadu - 628 204.

**ATTESTED**

  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

Copy to:

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

