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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. 380/46/B/16-RA

Date of Issue 12.10.2016

ORDER NO. 68/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 31.08.2018 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 Shaikh Tahoor

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-549 Dated 17.12.2015 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-CUSTM-PAX-APP-549 Dated 17.12.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated the facts of the case is that the applicant arrived at the CSI Airport on 02.02.2014. Examination of his baggage and person resulted in the recovery of seven gold bars weighing 816.2 gms valued at Rs. 20,51,013/- ( Rupees Twenty lakhs Fifty one thousand and thirteen ). Four gold bars were recovered from battery compartment of the mobile phones recovered from his pocket and three gold bars were recovered from his socks worn by him.

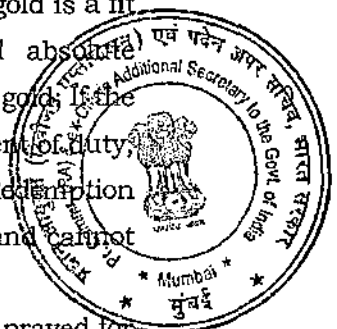
3. After due process of the law vide Order-In-Original No. JC/RR/ADJN/279/2014-15 dated 03.03.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold bars under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 2,00,000/- under Section 112 (a) 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-CUSTM-PAX-APP-549 dated 17.12.2015 set aside the absolute confiscation of the gold and allowed its redemption on payment of redemption fine of Rs. 3,30,000/-, and upheld the penalty of Rs. 2,00,000/- and partly allowed the appeal of the applicant.

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

5.1 The Order of the Commissioner (Appeals) is neither legal nor proper; It is an admitted fact that the passenger failed to make a declaration as required under section 77 of the Customs Act, 1962; As the respondent had not declared the gold the Commissioner ( Appeals ) order allowing redemption of the gold is not proper; The manner of concealment ie in the battery compartment of the mobile phones coupled with the fact that the respondent is not eligible to import the gold is a fit case for absolute confiscation; The lower authority had ordered absolute confiscation taking into consideration the ingenious concealment of the gold; If the respondent was not intercepted he would have got away without payment of duty, mis-using the liberalized facilitation requires exemplary punishment; Redemption fine and penalty depends on the facts and circumstances of the case and cannot be binding as a precedent;

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



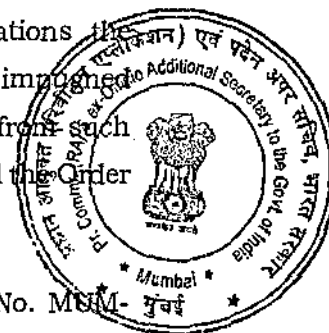
6. In view of the above, the Respondent was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was held on 23.08.2018. Nobody from the department attended the personal hearing. The Respondent through his advocate Shri Satish Kumar Dubey attended the hearing and reiterated the observations of the Appellate authority and in his written reply interalia submitted that;

6.1 The main issue to be decided is whether the confiscated gold can be allowed to be redeemed on payment of redemption fine and penalty under the provisions of section 125 of the Customs Act on merits; Gold has been held liable for confiscation as the respondent has not complied with certain conditions and can be considered for release on redemption fine; Gold after liberalization cannot be considered as prohibited goods; Goods have been seized from the respondent and there is no other claimant; There are a number of cases where gold which has been absolutely confiscated has been released on payment of redemption fine.

6.2 The Respondent cited decisions in favor of their case and prayed for setting aside the Revision Application and uphold the order of the Appellate authority or such an order as deemed fit.

7. The Government has gone through the case records it observed that the Applicant had ingeniously concealed the four gold in the battery compartment of his mobile phones and three gold bars in his socks. It was an attempt made with the intention to get past the customs authorities. The concealment of the gold was deliberately planned to avoid detection and to dodge the Customs Officer and smuggle out the same without payment of appropriate duty. This ingenious concealment clearly indicates mensrea, and that there was no intention of declaring the gold to the authorities and if it was not intercepted, the gold would not suffer payment of customs duty. There is no doubt about the fact that the provisions of Customs Act, 1962 has been contravened and therefore, the seized gold is liable for absolute confiscation. In view of the above mentioned observations the Government is inclined to agree with the Order in original and holds that the impugned gold has been rightly confiscated absolutely so as to deter such passengers from such activities in the future. Hence the Revision Application is liable to be allowed and the Order in Appeal liable to be set aside.

9. The Government therefore sets aside the impugned Order-in-Appeal No. MSM-CUSTOM-PAX-APP-549 dated 17.12.2015 passed by the Commissioner of Customs (Appeals), Mumbai - III. The order of the Original Adjudicating Authority, No. JC/RR/ADJN/279/2014-15 dated 03.03.2015 is upheld as legal and proper.



10. Revision application is allowed on above terms.

11. So, ordered.

*Ashok Kumar Mehta*  
21.8.18

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

ORDER No. 632/2018-CUS (WZ) /ASRA/MUMBAI

DATED 31.08.2018

To,

1. The Commissioner of Customs (Airport),  
Chatrapati Shivaji International Airport,

Terminal -2, Mumbai.

2. Shri Shaikh Tahoor
3. C/o.Satish Kumar Dubey, Advocate
4. Room No. 4A, 1<sup>st</sup> Floor,
5. 105 Dhanji Street,
6. Zaveri Bazaar'
7. Mumbai 400 003.

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**

*S.R. Hirulkar*  
21/8/18

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

