

REGISTEREDSPEED 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. 380/19/B/17-RA/2017

Date of Issue 22.11.2018

ORDER NO. 115/2018-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 Shashinbhai Mahendrabhai Patel

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-606-17-18 Dated 04.10.2017  
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-CUSTM-PAX-APP-606-17-18 Dated 04.10.2017 passed by the Commissioner of Customs (Appeals), Mumbai-III.

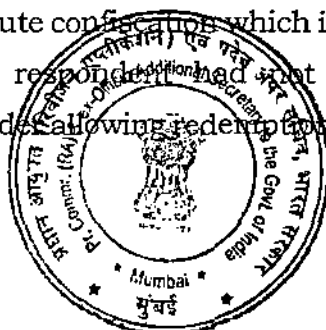
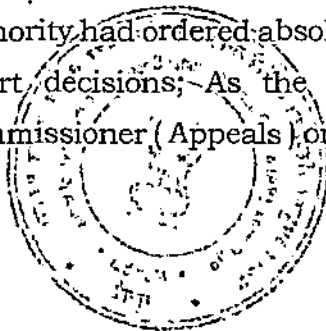
2. Briefly stated the facts of the case is that the Respondent arrived at the CSI Airport on 27.05.2015. Examination of his baggage and person resulted in the recovery of two gold bars and seven bits totally weighing 2640 gms valued at Rs. 66,20,216/- ( Rupees Sixty six Lakhs Twenty thousand Two hundred and Sixteen ). The gold was recovered from the shoes worn by him.

3. After due process of the law vide Order-In-Original No. ADC/RR/ADJN/378/2016-17 dated 22.11.2016 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. 6,50,000/- 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-CUSTM-PAX-APP-606-17-18 Dated 04.10.2017 set aside the absolute confiscation of the gold and allowed its redemption on payment of redemption fine of Rs. 12,00,000/-, and upheld the penalty of Rs. 6,50,000/- and partly allowed the appeal of the applicant.

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 the gold from the shoes of the respondent; The Respondent had opted for the green channel; It is an admitted fact that 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 Respondent has admitted committing the similar offences earlier; The lower authority had ordered absolute confiscation which is supported by Supreme Court decisions; As the respondent had not declared the gold the Commissioner ( Appeals ) order allowing redemption of the gold is not proper



considering the ingenious concealment in order to evade customs duty; The resort to section 125 of the Customs Act, 1962 to impose a fine in lieu of confiscation cannot be exercised so as to give a bonanza to the respondent.

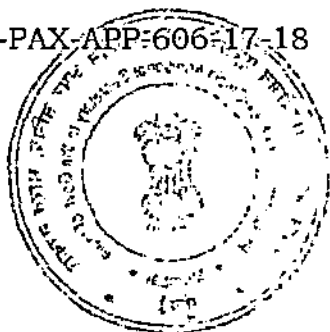
5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority and the order in original be upheld or such an order as deemed fit.

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, 27.06.2018 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. Government has gone through the facts of the case, the respondent had intentionally concealed the gold in his shoes and attempted to import the gold without declaration. 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, Act, 1962. The release on concessional rate of duty also cannot be entertained as the Applicant has not declared the gold as required under Section 77 of the Customs Act, 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.

8. 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. The Government therefore holds that the order of the Commissioner (Appeals) is required to be set aside.

9. The Government therefore sets aside the Order-in-Appeal MUMBAI CUSTM-PAX-APP=606-17-18 Dated 04.10.2017 passed by the



Commissioner of Customs (Appeals), Mumbai - III. The Order in original ADC/RR/ADJN/378/2016-17 dated 22.11.2016 is upheld as legal and proper.

10. So, ordered.

*Ashok Kumar Mehta*  
17.9.18

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

ORDER No. 715/2018-CUS (WZ) /ASRA/MUMBAI

DATED 17.09.2018

To,

1. The Principal Commissioner of Customs (Airport),  
Chatrapati Shivaji International Airport,  
Terminal -2, Mumbai.
2. Shri Shashinbhai Mahendrabhai Patel  
404B Chinmay Crysta,  
Opp Vastrapur Lake,  
Near Nehru Park Circle ,  
Vastrapur, Ahmedabad  
Gujarat - 358 054.

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*  
29/11/18

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

