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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. 380/98/B/14-RA

2019

Date of Issue 27.11.2018

ORDER NO. 717/2018-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 Modi Umar Isha Salaya

**Subject** : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-251-252/14-15 dated 08.07.2014 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-251-252/14-15 dated 08.07.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

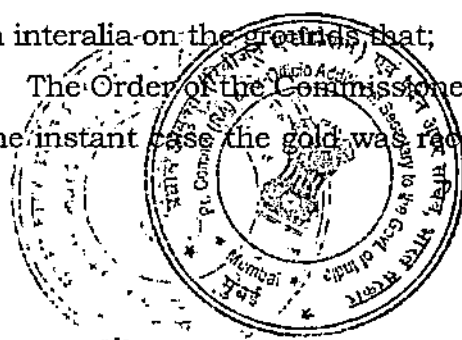
2. On 02.07.2013 the respondent arrived at the CSI Airport from Dubai.. Examination of his baggage resulted in the recovery of 16 pieces of gold totally weighing 932 gms valued at Rs. 22,12,493/- ( Rupees Twenty two lakhs Twelve thousand Four hundred and Ninety three). The gold was ingeniously concealed in a Toshiba TV . The respondent informed that as he was not given an air ticket when he signed off from a ship at Sharjah, he took the help of one Shri Hajibhai who brought him a ticket but asked him to carry a TV and hand over the same to Shri Mohamed Nowfal waiting outside the airport. The respondent claimed he had no knowledge of the concealed gold. Shri Mohamed Nowfal was also identified and apprehended by the officers.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/90/2013-14 dated 28.02.2014 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. 3,00,000/- under Section 112 (a) of the Customs Act,1962 on the Respondent and a penalty of Rs. 2,00,000/- on Shri Mohamed Nowfal 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-251-252/14-15 dated 08.07.2014 set aside the absolute confiscation of the gold and allowed its redemption on payment of redemption fine of Rs. 4,50,000/-, and reduced the penalty of Rs. 2,25,000/- and also reduced the penalty imposed on Shri Mohamed Nowfal to Rs. 1,00,000/- and 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 gold was recovered from the TV set carried by the



the passenger; The respondent had opted for the green channel inspite of carrying dutiable goods and failed to make a true declaration as required under section 77 of the Customs Act, 1962; The respondent accepted the possession, carriage and recovery of the seized gold from the TV and the receiver of the TV Shri Moammed Nowfal has admitted that this modus operandi was used for the last six days; The novel way of concealing the gold is used only by professional smugglers; The circumstances of the case and the intention of the respondent was not at all considered by the Appellate authority while allowing him to redeem the goods; The same should not have been allowed without pointing out any legal infirmity in the order in original;

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 18.05.2018, 16.08.2018 and 11.09.2018. 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 ingeniously concealed in the Toshiba TV carried 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. The Government also notes that the the receiver of the TV, waiting outside the airport has admitted that this modus operandi was adopted by them for the last six days.



2

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

9. Government therefore sets aside the Order in Appeal no MUM-CUSTOMS-PAX-APP-251-252/14-15 dated 08.07.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III. The Order-In-Original No. ADC/ML/ADJN/90/2013-14 dated 28.02.2014 issued by the Original Adjudicating Authority is upheld as legal and proper.

10. The Revision Application is allowed on above terms.

11. So, ordered.

  
17/9/18  
(ASHOK KUMAR MEHTA)

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

ORDER No. 717/2018-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 Modi Umar Isha  
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.

