

REGISTERED  
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. 371/65/B/14-RA

Date of Issue 27/11/2018

ORDER NO. 728/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 18.09.2018 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 : Shri Adi B. Dubash

Respondent : Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-AXP-APP-234-14-15 dated 03.07.2014 And MUM-CUSTM-AXP-APP-235-14-15 dated 03.07.2014 passed by the Commissioner of Customs (Appeals), Mumbai -III.

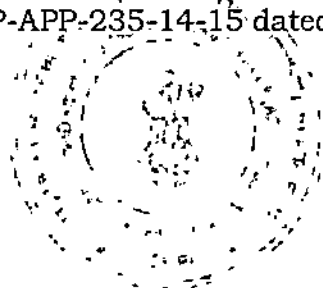
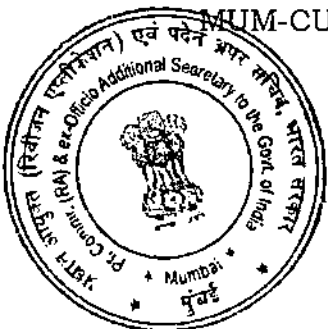


ORDER

This revision application has been filed by Shri Adi B. Dubash (herein referred to as Applicant) against the Order in Appeal MUM-CUSTOM-AXP-APP-234-14-15 dated 03.07.2014 and MUM-CUSTOM-AXP-APP-235-14-15 dated 03.07.2014 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Briefly stated the facts of the case are that the applicant, filed a baggage declaration form for clearance of his unaccompanied baggage which had arrived from Bangkok. In the baggage declaration form he declared four Buddha Idols and submitted a certificate in Thai language that the four idols were not antiques. As the Items appeared old, an opinion was sought from the Superintendent Archeologist, Archaeological Survey of India, Mumbai who informed that one of the idol was suspected to be an antique. On the basis of the said opinion an Expert Advisory Committee was convened for the said idol and the rest of the remaining idols were allowed clearance of payment of duty. The Expert Advisory Committee conveyed at the Office of the Archaeological Survey of India, Sion, Mumbai also certified the idol as an Antique. Aggrieved by the certification of the Expert Advisory Committee the Applicant filed an appeal before the Director General, Archaeological Survey of India, New Delhi, accordingly an Appeal Committee was held which also certified the idol as an antique. The experts scholars referred by the Superintendent Archeologist valued the idol at Rs. 5,00,000/-. As per the Foreign Trade Policy prevailing import of antiques was restricted, and as the Applicant did not produce an import licence, the Adjudicating authority vide order No. JC/RD/UBC/125/2011/ACC dated 11.07.2011 confiscated the idol absolutely under Section 111 (d) and (m) of the Customs Act,1962 and imposed penalty of Rs. 5,500/- under Section 112 (a) of the Customs Act,1962.

3. Aggrieved by the said order, the applicant as well as the revenue department filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-AXP-APP-234-14-15 dated 03.07.2014 and MUM-CUSTOM-AXP-APP-235-14-15 dated 03.07.2014 remanded the case of



the department back to the Adjudicating authority for the limited purpose of redeciding the amount of penalty and rejected the Appeal filed by the Applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that

5.1 Merely by a look from the outside and superficial determination an item does not become an antique; As per section 2(a) of the Antiquities and Art Act, 1972 only if an article has been in existence for 100 years it can be distinguished as an antique; The scientific method of determining the age for an antique is the Carbon dating test; The Archaeological Survey of India has standing arrangements with carbon dating or age determination facilities in the vicinity; These submissions have been ignored by the adjudicating authorities; The certificate issued by the Fine Arts and the Ancient department of the Thailand has not been considered; The export of Antiques is also banned in Thailand and if the article was an antique it would not be allowed for export; Being of Thailand origin a visual analysis should not have been deemed to be accurate; The idols were purchased from a footpath in the street market of Bangkok; The actual price of the idols actually paid was Rs. 1250/- had it been an antique it would not be sold for such a meagre sum; As the idols were not antiques the Applicant did not feel the need to procure a licence from DGFT; The Applicants constant prayer that a carbon dating test has not been considered.

5.2 The Revision Applicant prayed for setting aside the Order in Appeal and release of the gold without redemption fine and penalty for re-export and pass such order as deem fit in the interest of justice.

6. A personal hearing in the case was scheduled and Shri John Gomes and Shri Ishwar S. Gowda legal officer Advocate for the Applicant attended the hearing, they re-iterated the submissions filed in Revision Application and pleaded that the order in Appeal be set aside and The Revision Application be allowed. Nobody from the department attended the personal hearing.



7. The Government has gone through the facts of the case. At the outset a question arises as to why was there a necessity of procuring a certificate issued by the Fine Arts and the Ancient department of the Thailand, for a footpath purchase. It appears that it was an attempt to preempt further scrutiny on the single antique idol brought along with the other footpath idols. The Applicant has appealed against the Appellate order mainly on the grounds that the idol has been certified as an antique only by visual analysis, and in order to definitely ascertain that the idol is an antique, carbon dating test are absolutely necessary. The Commissioner (Appeals) in his order rightly notes that there is no dispute on the fact that the idol was assessed and certified by three different Authorities in India. The Superintendent Archeologist, Archaeological Survey of India, Mumbai, The Expert Advisory Committee convened at the Office of the Archaeological Survey of India, Sion, Mumbai. Not satisfied with the findings of the two above authorities the Applicant raised an appeal before the Director General, Archaeological Survey of India, New Delhi who also agreed with the assessment and confirmed that the idol was definitely an antique. Government observes that all the three authorities were unanimous in their certification of the idol as an antique. It is also observed that the (Director Antiques ) Archaeological Survey of India vide their letter dated 20.12.2016 after confirming that the idol was an antique marked a copy of the letter to the Applicant to get the article registered with the R.O. of Archeology & Museum, Mumbai-I immediately. The Commissioner ( Appeals) rightly notes that the Applicant has not challenged the order of the Director General, Archaeological Survey of India, New Delhi and therefore its decision has attained finality. Further the value of the idol has been estimated by experts in the field and the same cannot be refuted with an unsubstantiated claim of footpath purchase.

8. Government further notes that the Applicant had attempted to clear the idol valued at Rs. 5,00,000/- ( Rupees Five lakhs ) by declaring the idols as non-antique and thus rendering the goods liable for confiscation under Section 111 (d) and (m) of the Customs Act,1962 and subsequent penalty under Section 112 (a) of the Customs Act,1962. In view of the above the



Government finds no reason to interfere with the impugned Order in Appeal.  
The Revision Application is therefore liable to be dismissed.

9. Revision application is accordingly dismissed.

10. So, ordered.

*(Handwritten Signature)*

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

ORDER No. 720/2018-CUS (SZ) /ASRA/MUMBAI

DATED 18.09.2018

To,

1. Shri Adi B. Dubash  
37, Mount Napean,  
Nepeansea Road,  
Mumbai 400 036.

Copy to:

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

**ATTESTED**

*(Handwritten Signature)*  
23/9/18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

