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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. 371/70/B/14-RA/2063

Date of Issue 28.11.2018

ORDER NO. <sup>733</sup>/2018-CUS (WZ)/ASRA/MUMBAI DATED 26.09.2018 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. Surani Imtiyaz Jikar Salaya

Respondent: Commissioner of Customs, CSI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-000-APP-247-248/2014-15 Dated 08.07.2014 passed by the Commissioner of Customs (Appeals ), Mumbai -III.



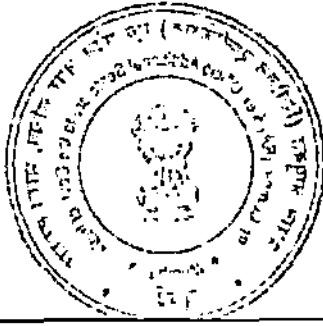
ORDER

This revision application has been filed by Shri. Surani Imtiyaz Jikar Salaya (herein referred to as Applicant) against the order in appeal . MUM-CUSTOM-PAX-APP-247-248/2014-15 Dated 08.07.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the applicant arrived at CSI airport, Mumbai on 02.07.2013. He was intercepted as he was clearing himself through the green channel. Examination of his baggage resulted in the recovery of 16 pieces of gold totally weighing 932 gms and valued at Rs. 22,12,293/- ( Rupees Twenty Two lakhs Twelve thousand Two hundred and Ninety three). The gold was indigenously concealed in aluminium containers recovered from a TV brought in as baggage. The Applicant informed that the TV was to be handed over to one Shri Mohd Nowfal, waiting outside the Airport.

3. The Original Adjudicating Authority, vide order No. ADC/ML/ADJN/89/2013-14 dated 28.02.2014 absolutely confiscated the gold mentioned above under section 111 (l) & (m) of the Customs Act, 1962. A Personal penalty of Rs. 3,00,000/- was imposed under Section 112 (a) of the Customs Act, 1962. A Personal penalty of Rs. 2,00,000/- was also imposed on Shri Mohd Nowfal under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the Applicant and Shri Mohd Nowfal preferred an appeal before the Commissioner (Appeals), Mumbai. The Commissioner of Customs (Appeals), Mumbai Zone-III in his Order-in-Appeal no. MUM-CUSTOM-PAX-APP-247-248/2014-15 Dated 08.07.2014 following the ratio of Supreme Court decision in Dhanak Madhusudan Ramji case, allowed redemption of confiscated goods under section 125 of Customs Act, 1962 on payment of fine of Rs. 4,50,000 (Rupees four lakhs fifty thousand only) to Shri Modi Umar Isha Salaya, being the person from whom the goods have been recovered. Having regard to the quantum of penalties levied in other similar cases, the penalty under section 112 of the Customs Act, 1962 on Shri Modi Umar Isha Salaya was reduced to Rs. 2,25,000 (Rupees two lakhs twenty five thousand only). On consideration that involvement of Shri Mohd. Nowfal



was to be post-clearance as recipient of the goods, penalty imposed on him was reduced to Rs 1,00,000 ( Rupees one lakh only).

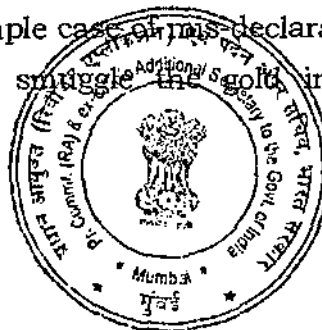
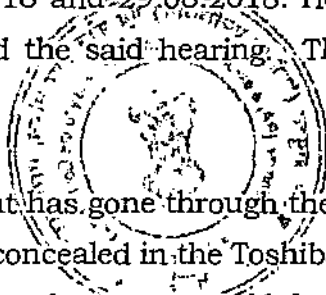
5. Being aggrieved and dis-satisfied with the above Order in Appeal, the Applicant has filed this Revision Application on the following grounds.

- The Applicant had imported the gold for the first time.
- The goods brought by the Applicant are neither restricted nor prohibited.
- The redemption fine and penalty is on the higher side compared to the gravity of the offence committed by the Applicant.
- The Respondent has not considered the Local Market Value to substantiate the margin of profit the Applicant may be earning, before imposing heavy Redemption fine and personal penalty and taking the same into consideration is necessary before imposing the same. The Respondent ought to have taken into consideration the International Market Value (IMV) and also Local Market Value (LMV), so as to differentiate the margin of profit. In this case, there is no margin of profit as after payment of duty, there is whatsoever any margin left. Therefore the fine and penalty imposed in this particular case is very harsh and unjustified.

The Applicant submits that in view of the above submissions the impugned order in appeal, be modified with substantial reduction in redemption fine and personal penalty.

5. 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 28.03.2018, 31.05.2018 and 29.08.2018. 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 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.

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 and Revision application is liable to be dismissed.

9. Government therefore sets aside the Order in Appeal no MUM-CUSTOM-PAX-APP-247-248/2014-15 Dated 08.07.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III. The Order-In-Original No. ADC/ML/ADJN/89/2013-14 dated 28.02.2014 issued by the Original Adjudicating Authority is upheld as legal and proper.

10. Revision application is dismissed on the above terms.

11. So, ordered.

*Ashok Kumar Mehta*  
26/9/18

(ASHOK KUMAR MEHTA)

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

ORDER No. 733/2018-CUS (WZ) /ASRA/MUMBAI

DATED 26.09.2018

To,

Shri. Surani Imtiyaz Jikar Salaya  
TA Khamhaliya Jamnagar,  
Gujarat- 361 310.



Copy to:

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