

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. 380/132-A/B/16-RA | 9222

Date of Issue 30.11.2018

ORDER NO. 945/2018-CUS (WZ) / ASRA / MUMBAI DATED 16.10.2018 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 : The Principal Commissioner of Customs, CSI Airport, Mumbai.

Respondent : Smt Mohida Umma Mohammed Jasmine.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-44-16-17 dated 09.05.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.



## ORDER

This revision application has been filed by Principal Commissioner of Customs, CSI Airport, Mumbai (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-44-16-17 dated 09.05.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

2. Based on suspicious movements, the passenger, Smt Mohida Umma Mohammed Jasmine (herein referred to as "the respondent") was intercepted by the officers of Air Intelligence Unit at the CSI Airport, Mumbai on his arrival by the Flight No. 9W-255 from Colombo on 25.11.2014. During the personal search of the respondent, the Customs Officers recovered one gold chain weighing 180 gms and two gold bangles weighing 76 gms on person. The total gold recovered on person weighed 256 gms valued at Rs. 6,05,767/- (Rupees Six Lakh Five Thousand Seven Thousand Seven Hundred Sixty Seven Only). The Customs officers seized the impugned gold bars under the reasonable belief that the same were smuggled into India and hence liable to confiscation under the provisions of the Customs Act, 1962.

3. After due process of the law vide Order-In-Original No. Air Cus/49/T-2/9339/2014 D Batch dated 30.06.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold weighing 256 gms valued at Rs. 6,05,767/- (Rupees Six Lakh Five Thousand Seven Thousand Seven Hundred Sixty Seven Only) under Section 111 (d), (l) & m and imposed penalty of Rs. 60,000/- under Section 112 (a) & (b) of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-44-16-17 dated 09.05.2016 allowed re-export of impugned goods on payment of redemption fine of Rs. 1,00,000/- and upheld the penalty imposed by the Adjudicating Authority.



5. Aggrieved with the above order the Department has filed this revision application on the grounds that

5.1 the respondent, while carrying the impugned gold, had deliberately and knowingly opted for green channel.

5.2 the respondent is a frequent flier who flies to India at different Airport from time to time and travelled twenty four times to India within a short span of eleven months, which clearly indicates that the passenger is acting as a carrier of gold, either on her own or on behalf of some other person / racket for monetary consideration.

5.3 Gold in any form including ornaments can be imported by a passenger only under Notification 31/2003-Cus dated 01.03.2003 issued under Section 25 of the Customs Act, 1962, on fulfillment of conditions imposed therein by an eligible passenger. In the present case, carrying crude jewellery by a foreign national coupled with the fact that the passenger is not eligible for import of gold is a fit case for absolute confiscation of seized gold.

5.4 the commissioner has also erred in granting the re-export of seized gold by imposing redemption fine under Section 125 of Customs Act, 1962. The option to redeem the seized goods under Section 125 of the Customs Act, 1962 is the discretionary power of the Adjudicating Authority depending on the facts of each case and after examining the merits.

6. The Department requested to set aside the impugned order in appeal and uphold the order in original.

7. A show cause notice under Section 129DD of the Customs Act, 1962 was issued to the respondent with request to show cause within 15 days as to why the said order in original should not be annulled or any other order as deemed fit be passed by the Government on the grounds stipulated in the said revision application. No reply was received in this regard from the respondent.

8. A personal hearing in the case was held on 01.10.2018, 30.10.2018 & 06.11.2018. Shri R.P. Kulkarni, Superintendent attended the hearing



on behalf of the Department on 01.10.2018. He re-iterated the submissions filed in Revision Application. The applicant did not appear for personal hearing.

9. The Government has gone through the case records and it is seen that the respondent arrived at the CSI Airport on 25.11.2014 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of one gold chain weighing 180 gms and two gold bangles weighing 76 gms on person. The total gold recovered on person weighed 256 gms valued at Rs. 6,05,767/- .

10. The Original Adjudicating Authority ordered absolute confiscation 256 gms. of gold valued at Rs. 6,05,767/- under Section 111 (d), (l) & (m) of and imposed a penalty of Rs. 60,000/- under Section 112(a) & (b) of the Customs Act, 1962 on the respondent. The Commissioner of Customs (Appeals), Mumbai vide his Order-In-Appeal No. MUM-CUSTOM-PAX-APP-44-16-17 dated 09.05.2016 the re-export of impugned goods on payment of redemption fine of Rs. 1,00,000/- and upheld the penalty imposed by the Adjudicating Authority.

11. The Government has gone through the facts of the case. The impugned gold i.e. one chain and two bangles were all in non-commercial quantities and under the circumstances confiscation of the goods is not justified. The gold chain and bangles were worn by the respondent and were not ingeniously concealed. Though the respondent is a frequent flier to India at different Airports, this is not sufficient cause to infer that she is acting as a carrier of gold, either on her own or on behalf of some other person / racket for monetary consideration. The department did not produce details of cases filed against respondent in which she was involved in any offences and it was a hardcore attempt on her part to smuggle the goods into India. In view of the above facts, the Government is of the opinion that the Appellate Authority has rightly set aside the order of original and allowed the respondent the re-export of the gold on payment of redemption fine.



12. The Government finds no reason to interfere with the Order in Appeal. The Appellate order MUM-CUSTOM-PAX-APP-44-16-17 dated 09.05.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone - III is upheld as legal and proper.

12. Revision Application is dismissed.

13. So ordered.

*(Handwritten signature)*  
16.11.2018

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

ORDER No. <sup>945</sup>/2018-CUS (WZ) /ASRA/MUMBAI DATED 16.11.2018

To,

1. The Principal Commissioner of Customs,  
T-2, C.S.I. Airport, Mumbai - 400 099.
2. Smt. Mohida Umma Mohammed Jasmine,  
C/O Smt. Nuzhar Y. Pistawala, Advocate,  
19/21, Maaz Mansion, 1<sup>st</sup> Floor, R.No. 7,  
2<sup>nd</sup> Marine Street, Dhobitalao, Mumbai -400002.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai - Zone-III.
2. Smt. Nuzhar Y. Pistawala, Advocate,  
19/21, Maaz Mansion, 1<sup>st</sup> Floor, R.No. 7,  
2<sup>nd</sup> Marine Street, Dhobitalao, Mumbai -400002.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

**ATTESTED**

*(Handwritten signature)*  
30.11.18

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

