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GOVERNMENT OF INDIA
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 380/49-A/B/16-RA

Date of Issue 30.11.2018

ORDER NO. 946/2018-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. Atifa Zikra Mulki.

Subject : Revision Application filed, under Section 129DD
of the Customs Act, 1962 against the Order-
in-Appeal No. MUM-CUSTOM-PAX-APP-526-15-16
dated 09.12.2015 passed by the Commissioner of
Customs (Appeals), Mumbai Zone-III.

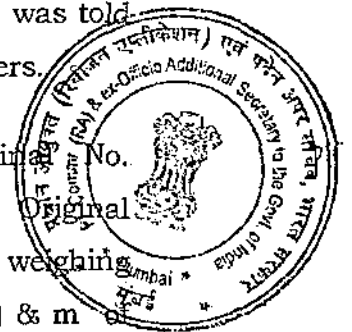
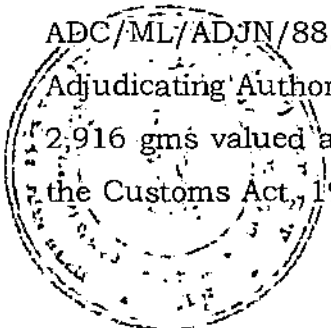


ORDER

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-526-15-16 dated 09.12.2015 passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

2. Based on information, the passenger, Smt. Atifa Zikra Mulki (herein referred to as "the respondent") was intercepted by the officers of Air Intelligence Unit at the CSI Airport, Mumbai on her arrival by the Jet Airways Flight No. 9W-523 from Riyadh on 06.05.2014. During the personal search of the respondent, the Customs Officers recovered 14 gold bars of 10 tola each which were concealed in the inner sole of the shoes worn by her and 11 gold bars of 10 tola each concealed in undergarments worn by her. Thus in all 25 gold bars of 10 tola each with markings "SUISEE 10 TOLAS FINE GOLD 999.9" recovered by the officers. The impugned gold of totally weighed at 2,916 gms and was appraised at Rs.74,87,909/- (Rupees Seventy Four Lakh Eighty Seven Thousand Nine Hundred and Nine 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. The respondent stated that the said gold belonged to one of her husband's friend who is the owner of gold under seizure. The respondent also stated that she did not have receipt for the said gold and would not claim the gold in future. She also stated that her husband and daughter have already cleared themselves from Airport and she was told that the Customs Officers generally do not check ladies passengers.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/88/2014-15 dated 21.11.2014 the Adjudicating Authority ordered absolute confiscation of the gold weighing 2,916 gms valued at Rs. 74,87,909/- under Section 111 (d), (l) & m of the Customs Act, 1962. The Adjudicating Authority also imposed penalty



of Rs. 7,50,000/- 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- MUM-CUSTOM-PAX-APP-526-15-16 dated 09.12.2015 gave option to the respondent to redeem the gold on payment of redemption fine of Rs. 12,00,000/-. The Appellate Authority upheld the penalty of Rs. 7,50,000/- imposed by the adjudicating authority.

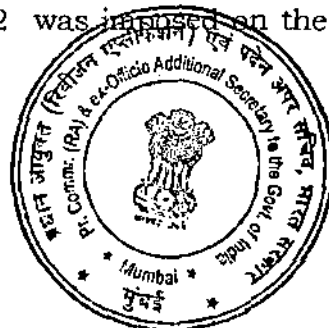
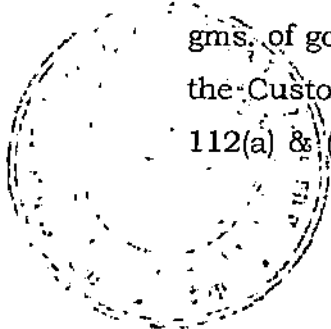
5. Aggrieved with the above order the Department has filed this revision application on the grounds that the option to redeem the seized goods under Section 125 of the Customs Act, 1962 is the discretionary power of the Adjudicating Authority depending on the facts of each case and after examining the merits.

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

7. A personal hearing in the case was held on 01.10.2018, 30.10.2017 & 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. However, the respondent did not appear for the personal hearing.

8. The Government has gone through the case records and it is seen that the respondent arrived at the CSI Airport on 06.05.2014 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of 14 gold bars of 10 tola each which were ingeniously concealed in the inner sole of the shoes worn by the respondent and 11 gold bars of 10 tola each in undergarments worn by her totally weighing 2,916gms valued at Rs. 74,87,909/- .

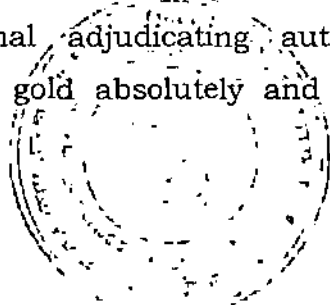
9. The Original Adjudicating Authority absolutely confiscated 2,916 gms. of gold valued at Rs. 74,87,909/- under Section 111 (d), (l) & (m) of the Customs Act,1962 and a penalty of Rs. 7,50,000/-- under Section 112(a) & (b) of the Customs Act, 1962 was imposed on the respondent.



The Commissioner of Customs (Appeals), Mumbai vide his Order-In-MUM-CUSTM-PAX-APP-526-15-16 dated 09.12.2015 gave option to the respondent to redeem the goods on payment of redemption fine of Rs. 12,00,000/-. The Appellate Authority upheld the penalty of Rs. 7,50,000/- imposed by the adjudicating authority.

10. The Government notes that the respondent has ingeniously concealed 14 gold bars of 10 tola each in the inner sole of the shoes worn by her and 11 gold bars of 10 tola each in undergarments worn by her totally weighing 2,916gms valued at Rs. 74,87,909/- with the clear intent not to declare it to the Customs Officers and to clear them clandestinely without declaration and without payment of Customs duty. Filing true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger. In the instant case, the respondent, on her arrival at Airport, was asked by the Customs Officers as to whether she was carrying any gold / gold jewellery or crude gold in her baggage or on her person to which she replied in the negative. The act on the part of respondent clearly shows her intention to clear the impugned gold without payment of Customs Duty.

11. It is evident that the respondent has contravened the provisions of Customs Act, 1962. Therefore, the seized gold is liable for absolute confiscation under the provisions the Customs Act, 1962 as the respondent has deliberately concealed the seized gold to avoid detection and to dodge the Customs Authorities and smuggle out the same without payment of appropriate duty. This clearly indicate *mens-rea*, the respondent had no intention of declaring the impugned gold to the authorities and if she was not intercepted before the exit, the respondent would have taken out the impugned gold without payment of Customs duty. This aspect was not taken into consideration by the appellate authority while deciding the case. Therefore, the Government holds that the original adjudicating authority has rightly confiscated the impugned gold absolutely and the Order in Appeal passed by the



Commissioner (Appeals) vide order No. MUM-CUSTOM-PAX-APP-526-15-16 dated 09.12.2015 is liable to be set aside.

12. Taking into consideration the forgoing discussion, Government sets aside the Order in Appeal No. MUM-CUSTOM-PAX-APP-526-15-16 dated 09.12.2015 and upholds the Order in Original No. ADC/ML/ADJN/88/2014-15 dated 21.11.2014.

13. The Revision Application is allowed in terms of above.

14. So, ordered.

Ashok Kumar Mehta
16.11.18

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

ORDER No. 946/2018-CUS (WZ) /ASRA/MUMBAI DATED 16.10.2018

To,

1. The Principal Commissioner of Customs,
T-2, C.S.I. Airport, Mumbai - 400 099.
2. Smt. Atifa Zikra Mulki,
12, Siddi Umara, Showkat Ali Road,
Alwa Street, Bhatkal- 581 320.
51.

Copy to:

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

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

