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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. 380/107-A/B/16-RA / 27<sup>th</sup>

Date of Issue 30.11.2018

ORDER NO. 947 / 2018-CUS (WZ) / ASRA / MUMBAI DATED  
/ 6.11.2018 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. Fathima Miffla Mohamed Mohideen  
Rasheeth Khan

Subject : Revision Application filed, under Section 129DD  
of the Customs Act, 1962 against the Order-  
in-Appeal No. MUM-CUSTOM-PAX-APP-697/2015-  
16 dated 07.03.2016 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-CUSTM-PAX-APP-697/2015-16 dated 07.03.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

2. Based on suspicious movements, the passenger, Smt.Fathima Miffla Mohamed Mohideen Rasheeth Khan (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 Flight No. 9W-255 from Colombo on 10.03.2014. The respondent cleared herself through Customs Green Channel and had shown the value of the goods imported as blank in the Customs Declaration Form at Column No. 6. During the personal search of the respondent, the Customs Officers recovered two silver coloured anklets worn on her ankles on both the feet. On examination of the same they were found to be of yellow metal, purported to be gold. Further, the officers recovered assorted jewellery consisting of four bangles, two chains, one chain with pendent and two bracelets made of yellow metal, purported to be gold, concealed in a specially stitched pockets of the panties worn by her. The recovered gold was found to be totally weighing 1015 gms valued at Rs. 25,88,554/- (Rupees Twenty Five Lakh Eighty Eight Thousand Five Hundred Fifty Four Only). The Customs officers seized the impugned gold 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 her and the same was purchased by her husband from the money he got after retirement, which she wanted to sell in Indian market to earn some profit.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/12/2015-16 dated 23.04.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold weighing 1,015 gms valued at Rs. 25,88,554/- under Section 111 (d), (l) & m of the Customs



Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 2,50,000/- 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-Appeal No. MUM-CUSTOM-PAX-APP-697/2015-16 dated 07.03.2016 allowed re-export of the gold on payment of redemption fine of Rs. 4,50,000/-. The Appellate Authority upheld the penalty of Rs. 2,50,000/- 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 fixed on 01.10.2018, 25.10.2018 & 05.01.2018. 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 respondent did not appear for the personal hearing on fixed dates.

8. The Government has gone through the case records and it is seen that the respondent arrived at the CSI Airport on 10.03.2014 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of two silver coloured anklets worn on her person and assorted jewellery consisting of four bangles, two chains, one chain with pendent and two bracelets made of gold, concealed in a specially stitched pockets of the panties worn by her. The recovered gold was found to be totally weighing 1015 gms valued at Rs. 25,88,554/-gms. The respondent had ingeniously concealed the gold anklets under the



guise of silver metal and also concealed the rest of jewellery ingeniously in a specially stitched pockets of the panties worn by her.

9. The Original Adjudicating Authority absolutely confiscated 1,015 gms. of gold valued at Rs. 25,88,554/- under Section 111 (d), (l) & (m) of the Customs Act, 1962 and a penalty of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) 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-697/2015-16 dated 07.03.2016 allowed the respondent to re-export the impugned gold on payment of redemption fine of Rs. 4,50,000/- (Rupees Four Lakh Fifty Thousand Only). The Appellate Authority upheld the penalty of Rs. 2,50,000/- imposed by the adjudicating authority.

10. The Government notes that the respondent has ingeniously concealed the gold jewellery of 1,015 gms valued at Rs. 25,88,554/- 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. The Government finds that the respondent cleared herself through Green Channel. Further, 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 and ingeniously 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-697/2015-16 dated 07.03.2016 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-697/2015-16 dated 07.03.2016 and upholds the Order in Original No. ADC/ML/ADJN/12/2015-16 dated 23.04.2015

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

14. So, ordered.

*(Handwritten Signature)*  
16.11.18

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

ORDER No. 94/2018-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. Fathima Miffa Mohammed Mohideen Rasheeth Khan,  
C/o Shri P.K. Shingarani.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai - Zone-III.
2. Shri P.K. Shingarani, Advocate  
New MIG Colony, 12/334, 6th floor,  
Vivek, Behind P.F. Office, Bandra (E),  
Mumbai - 400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

**ATTESTED**

*(Handwritten Signature)*  
30.11.18

एस. आर. हिरुलकर  
S. R. HIRULKAR

