

REGISTERED
SPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F.No. 380/4-B/16-RA

22/8

Date of Issue 30.11.2018

ORDER NO. 949/2018-CUS (WZ) / ASRA / MUMBAI DATED 19.11.2018 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 : Shri Fahim Hasan Khan Deshmukh.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-414/15-16 dated 07.10.2015 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

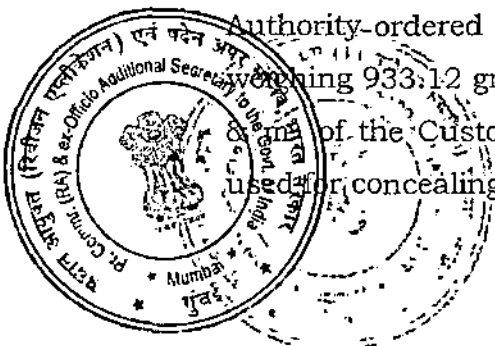


ORDER

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-414-15-16 dated 07.10.2015 passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

2. The passenger, Shri Fahim Hasan Khan Deshmukh (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 Etihad Airways Flight No. EY 206 from Abu Dhabi on 02.03.2014 who opted to clear himself through Customs in the Green Channel. During the detail examination, two gold biscuits wrapped in tissue paper were recovered from his right leg socks, two gold biscuits from his left leg socks, one gold biscuit from his right hand side pocket of his blue coloured jeans trouser and three gold biscuits from back side pocket of jeans trouser worn by him. Thus the officers recovered total of eight gold biscuits having marking as "CREDIT SUISSE 10 TOLAS 999.0 (CHI)" totally weighing 933.12 gms and collectively valued at Rs. 25,43,438/- (Rupees Twenty Five Lakh Forty Three Thousand Four Hundred Thirty Eight Only). The Customs officers seized the impugned gold biscuits 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 seized eight gold biscuits were given to him by his cousin Murtaza and he concealed the gold in the socks and pockets so that it would not be easily noticed and thus he could clear customs without declaring the same and thus evade the duty.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/94/2014-15 dated 28.11.2014 the Original Adjudicating Authority ordered absolute confiscation of the eight gold biscuits totally weighing 933.12 gms valued at Rs. 25,43,438/- under Section 111 (d), (l) of the Customs Act, 1962, absolute confiscation of tissue papers used for concealing the gold under Section 119 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- MUM-CUSTOMS-PAX-APP-414/15-16 dated 07.10.2015 gave option to the respondent to redeem the gold on payment of redemption fine of Rs. 4,00,000/- and on payment of applicable rate of duty. 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 :

5.1 the applicant had failed to make a true declaration of the contents of his baggage to Customs as required under Section 77 of the Customs Act, 1962.

5.2 the applicant is not an "eligible passenger " and the blatant mis-use of the facility of opting to clear through Green channel in manner by ingeniously concealing gold indicate the criminal mindset of the applicant.

5.3 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, 30.10.2018 & 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. However, the respondent did not appear for personal hearing so fixed.

8. The Government has gone through the case records and it is seen that the respondent arrived at the CSI Airport on 02.03.2014 and was intercepted by the Customs Officers and examination his baggage



confiscation under the provisions the Customs Act, 1962 as the respondent has smartly and deliberately concealed the seized gold biscuits 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 biscuits to the authorities and if he was not intercepted, the respondent would have taken out the impugned gold biscuits without payment of Customs duty. 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-CUSTM-PAX-APP-414-15-16 dated 07.10.2015 is liable to be set aside.

12. Taking into consideration the forgoing discussion, Government sets aside the Order in Appeal No. MUM MUM-CUSTM-PAX-APP-414-15-16 dated 07.10.2015 and restores the impugned Order in Original.

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

14. So, ordered.

Ashok Kumar Mehta
19.11.18

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

ORDER No. 949/2018-CUS (WZ) /ASRA/MUMBAI DATED 19.11.2018

To,

1. The Principal Commissioner of Customs,
T-2, C.S.I. Airport, Mumbai – 400 099.
2. Shri Fahim Hasan Khan Deshmukh,
At. PO Uppertudil,
Tal. Mahad, Raigad, Maharashtra – 402 115.

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.)

