

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. 380/122-A/B/16-RA

Date of Issue 30.11.2018

ORDER NO. 950/2018-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 : Pr. Commissioner of Customs(Airport), Mumbai

Respondent : Shri Shoeb Ali

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-774/16-17 dated 15.04.2016 passed by  
the Commissioner of Customs(Appeals), Mumbai-III



**ORDER**

This revision application has been filed by Commissioner of Customs(Airport), Mumbai against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-774/16-17 dated 15.04.2016 passed by the Commissioner of Customs(Appeals), Mumbai-III(hereinafter referred to as the "Applicant") in respect of Shri Shoeb Ali(hereinafter referred to as the "Respondent").

2.1 Briefly stated, the facts of the case are that the respondent on arrival at CSI Airport, Mumbai from Bangkok on 27.04.2014 was intercepted by Customs Officials after he had cleared himself through the "Green Channel". The respondent had shown the value of the goods imported as blank in the Indian Customs Declaration Form at column no. 9 thereof. During the course of the personal search of the respondent, the officers recovered one cut gold bar which was cleverly concealed inside the underwear worn by him. The gold which was recovered was found to be weighing 490 gms and was valued at Rs. 12,84,035/- (Rupees Twelve Lakhs Eighty Four Thousand Thirty Five Only) and was seized under the provisions of the Customs Act, 1962.

2.2 The statement of the respondent was recorded under Section 108 of the Customs Act, 1962 on 27.04.2014 wherein he stated that he was the owner of the said gold but that he does not have any invoice for purchase of the same. He claimed that he had bought the gold from his friend in Bangkok and paid US \$ 5000 and had promised to pay the remaining amount in due course. He further admitted that he had concealed the gold to avoid detection by customs and to avoid payment of customs duty and earn profit by selling the gold in the Indian market. He also admitted possession, carriage, non-declaration, concealment and recovery of seized gold.

3. A show cause notice dated 14.10.2014 was issued to the respondent proposing confiscation of one cut gold bar weighing 490 gms valued at Rs. 12,84,035/- and imposition of penalty for violation of the provisions of the Customs Act, 1962.

4. The adjudicating authority adjudicated the case vide Order-in-Original No. ADC/ML/ADJN/212/2015-16 dated 6.11.2015 absolutely confiscating one cut gold bar totally weighing 490 gms valued at Rs. 12,84,035/- under Section



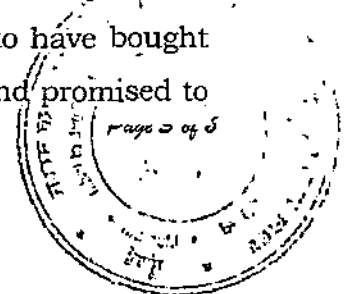
111(d), (l) & (m) of the Customs Act, 1962 and imposed personal penalty of Rs. 1,20,000/- on the respondent under Section 112(a) and (b) of the Customs Act, 1962.

5. Aggrieved by the order of the adjudicating authority, the respondent filed appeal before the Commissioner(Appeals) and requested for release of the impugned gold which had been absolutely confiscated contending that the import of gold is not banned.

6. The Commissioner(Appeals) vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-774/16-17 dated 15.04.2016 allowed the respondent to redeem the impugned goods on payment of redemption fine of Rs. 2,00,000/- alongwith applicable rate of duty and upheld the penalty imposed by the adjudicating authority on the respondent mainly on the ground that there is not much difference in the price of gold prevailing in the international market as compared to the price of gold prevailing in the local market and that the margin of profit is very low.

7. The Department did not find the impugned Order-in-Appeal to be legal and proper and therefore filed revision application on the following grounds:

- (i) The respondent had shown the value of the goods imported as blank at column no. 9 in the Indian Customs Declaration Form. He was intercepted after he had cleared himself through the Green Channel. During the course of his personal search, the officers recovered one cut gold bar which had been cleverly concealed inside the underwear worn by him. The gold which was recovered was found to be totally weighing 490 gms and was valued at Rs. 12,84,035/-, was seized under the provisions of the Customs Act, 1962.
- (ii) The respondent had failed to make a true declaration of the contents of his baggage to the Customs in the Customs Declaration Form as required under Section 77 of the Customs Act, 1962.
- (iii) In the statement of the respondent recorded on 27.04.2014 by the Customs Officers under Section 108 of the Customs Act, 1962, he stated that he is the owner of the said gold but did not have any invoice evidencing the purchase of the gold which he claimed to have bought from his friend in Bangkok on payment of US \$ 5000 and promised to

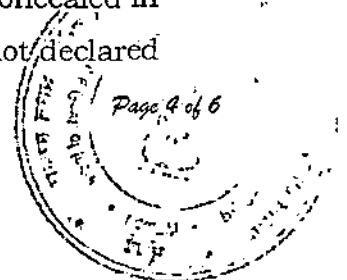


pay the remaining amount in due course. He had further submitted that he had concealed the gold to avoid detection by customs and to avoid payment of customs duty and to earn profit by selling the gold in the Indian market. He had also admitted to possession, carriage, non-declaration, concealment and recovery of the seized gold.

- (iv) The manner in which the gold was brought by concealing it inside the underwear was clever and ingenious. Moreover, the respondent had chosen to walk through the green channel without declaring the gold. Therefore, this was a fit case for absolute confiscation as a deterrent punishment for misusing the facility of green channel.
- (v) Since the gold had been ingeniously concealed and not declared by the respondent, it ought not to have been allowed for redemption.
- (vi) The judgment of the Hon'ble Supreme Court in the case of Samyanthan Murugesan vs. CC(AIR), Chennai-I[2010(254)ELT A15(SC)] upholding absolute confiscation was relied upon.
- (vii) The judgment of the Hon'ble High Court of Delhi in the case of Jain Exports vs. UOI[1987(29)ELT 753(Del)] holding that the option of redemption fine and penalty would depend on the facts and circumstances of the case and other cases cannot be a binding precedent.

8. The respondent was granted opportunity to be heard on 3.10.2018, 25.10.2018 and 5.11.2018. However, the respondent failed to avail of the opportunity to be heard. Shri Rajkumar Kulkarni, Superintendent(Review), CSI Airport appeared on behalf of the department on 1.10.2018. He reiterated the submissions made in the revision application and pleaded that the impugned Order-in-Appeal be set aside & revision application be allowed.

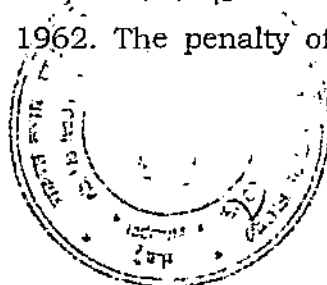
9. The Government has gone through the facts of the case. The facts of the case are that the respondent has arrived at Mumbai Airport from Bangkok Flight No. PG-733 on 26.04.2014. It is observed that one cut gold weighing 490 gms and valued at Rs. 12,84,035/- was found concealed in the undergarment worn by the respondent. The passenger had not declared



the fact that he was carrying the cut gold bar to the proper officer of customs. In so far as the method of concealing the gold bar is concerned, the Government is of the view that it cannot be termed as "ingenious concealment" as the gold bar would invariably be detected while being examined by a metal detector. As such, the import of gold is restricted but not prohibited. In so far as the grounds relating to the amplitude of Section 125 of the Customs Act, 1962 on the question as to whether the goods which are said to have been concealed can be released on payment of redemption fine is concerned, it is observed that these provisions mandate allowing the goods to be redeemed on payment of fine. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised.

10. It is observed that the Commissioner(Appeals) has discussed the issue at length and also the various judgments on this point. The Government is therefore inclined to agree with the Order-in-Appeal in allowing one cut gold bar to be redeemed on payment of fine and penalty. Government notes that the redemption fine and penalties should be commensurate to the offence committed so as to deter such acts in future. The Respondent had concealed one cut gold bar, he did not declare it and therefore the redemption fine which is only 15% of the value of the impugned goods will not be sufficient to deter the respondent from engaging in any such act in the future. The Respondent had concealed the gold bar, he did not declare it and therefore the redemption fine cannot be as low as ordered in the order in appeal. Government is of the opinion that the impugned Order in Appeal is required to be modified.

1-1. The Government allows redemption of one cut gold bar weighing 490 gms and valued at Rs. 12,84,035/-(Rupees Twelve Lakhs Eighty Four Thousand Thirty Five Only) on payment of customs duties as applicable. The redemption fine imposed is increased from Rs. 2,00,000/-(Rupees Two Lakhs Only) to Rs. 5,00,000/-(Rupees Five Lakhs Only) under section 125 of the Customs Act, 1962. The penalty of Rs. 1,20,000/-(Rupees One Lakh



Twenty Thousand Only) imposed on the Respondent under Section 112(a) & (b) of the Customs Act, 1962 is sufficient to meet the ends of justice, hence upheld.

12. Revision application is partly allowed on the above terms.

13. So, ordered.

*(Handwritten Signature)*  
14.11.18

(ASHOK KUMAR MEHTA)

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

ORDER No. <sup>950</sup>/2018-CUS (WZ) /ASRA/MUMBAI

DATED 19.11.2018

To,  
Shri Shoeb Ali  
C/o Shri P. K. Shingrani, Advocate,  
12/334, New MIG Colony,  
Bandra(E), Mumbai 400 051

Copy to:

1. Commissioner of Customs(Airport), Mumbai
2. Commissioner of Customs(Appeals), Mumbai-III
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.)

