

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. 380/37/B/16-RA

22/5

Date of Issue 30.11.2015

ORDER NO. <sup>952</sup>/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 20.11.2018  
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 Roshan Ali

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-494/15-16 dated 18.11.2015 passed by  
the Commissioner of Customs(Appeals), Mumbai-III



**ORDER**

This revision application has been filed by the Principal Commissioner of Customs(Airport), Mumbai against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-494/15-16 dated 18.11.2015 passed by the Commissioner of Customs(Appeals), Mumbai-III(hereinafter referred to as the "Applicant") in respect of Shri Roshan 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 10.02.2014 was intercepted by Officers of the Air Intelligence Unit while he was proceeding towards the exit gate after he had cleared himself through the "Green Channel". The said passenger was found with Customs Declaration Form showing the details of the goods carried by him, where column no. 6 declaring value of imported goods had been shown as blank. The personal search of the said passenger was carried out in the presence of two independent panchas and in the presence of Gazetted Officers. The search resulted in the recovery of four cut pieces of gold wrapped in brown cello tape which was concealed inside the soles of the chappals worn by him. The total value of the 4 cut pieces of gold recovered from the respondent totally weighing 484 gms was collectively assessed at Rs. 12,30,899/-(Rupees Twelve Lakhs Thirty Thousand Eight Hundred Ninety Nine Only). The said gold was seized by the officers under panchnama dated 11.02.2014 under the reasonable belief that the same was being smuggled into India in contravention of the provisions of the Customs Act, 1962 and hence was liable for confiscation under the provisions of the Customs Act, 1962.

2.2 The passenger in his statement recorded on 11.02.2014 stated that the four cut pieces of gold which had been seized were given to him by Shri Akhtar in Bangkok; that Shri Akhtar had concealed the gold in the soles of the chappals so that it would not be easily noticed and he could thus clear customs without declaring the gold; that one of Shri Akhtar's friends would come to collect the chappals with gold concealed in them; that his photo had been sent on whatsapp so that the person could identify him in Mumbai; that he was to receive monetary consideration of Rs. 30,000/- after he had handed over the gold; that he was aware that carrying gold without declaring the same and evading customs duty is an offence under Customs law, and that he admitted



carriage, possession and recovery of the gold bars concealed inside the soles of the chappals worn by him.

3. The adjudicating authority vide Order-in-Original No. ADC/ML/ADJN/133/2014-15 dated 4.02.2015 ordered absolute confiscation of the four cut pieces of gold weighing 484 gms valued at Rs. 12,30,899/- and imposed penalty of Rs. 1,20,000/- on the respondent for ingenious concealment and as he had acted as a professional carrier.

4. Aggrieved by the order-in-original, the respondent filed an appeal before the Commissioner(Appeals). The Commissioner(Appeals) vide Order-in-Appeal No. MUM-CUSTOMS-PAX-APP-494/15-16 dated 18.11.2015 allowed redemption of the impugned goods on payment of fine of Rs. 2,00,000/- upholding the penalty of Rs. 1,20,000/- imposed by the adjudicating authority, mainly on the ground that there was no other claimant; that the gold had to be given to the owner of the goods or where the owner is not known, to the person from whose possession or custody such goods have been seized and that it was the first incident of the passenger having been found indulging in such activities.

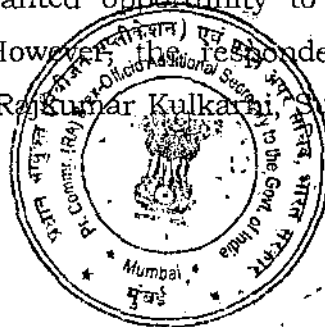
5. The Department did not find the impugned Order-in-Appeal to be legal and proper and therefore filed revision application on the following grounds:

- (i) The respondent had shown the value of the goods imported as blank at column no. 6 in the Indian Customs Declaration Form. The personal search of the respondent was conducted in the presence of two independent panchas and in the presence of Gazetted Officers which resulted in the recovery of four cut pieces of gold wrapped with brown cello tape which was concealed inside the soles of the chappals worn by him. The total value of the four cut pieces of gold recovered from the respondent weighing 484 gms was collectively assessed at Rs. 12,30,899/- and was seized by the officers under panchnama dated 11.02.2014 under the reasonable belief that the same was being smuggled into India in contravention of the provisions of the Customs Act, 1962 and hence was liable to confiscation under 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) The respondent was not an "eligible passenger" and the manner in which the gold was concealed ingeniously and cleared through the green channel indicates the greed and criminal mindset of the passenger. Therefore, it was a fit case to order absolute confiscation as a deterrent to passengers misusing the facility of green channel.
- (iv) The option to allow redemption of the goods was within the discretionary power of the adjudicating authority under Section 125 of the Customs Act, 1962. In the present case, the respondent had not declared the gold to customs and the gold was detected only after he was intercepted by the AIU and a personal search was carried out. The manner in which the gold was imported by ingeniously concealing it inside the soles of the chappals worn by the respondent showed his criminal bent of mind and clear intention to evade payment of customs duty on dutiable goods smuggled into India. Had the respondent not been intercepted by customs, he would have made good with the gold ingeniously concealed in the soles of his chappals. Such acts of misusing the liberalised facilitation process should be meted out exemplary punishment and deterrence. The Commissioner(Appeals) should therefore not have allowed redemption of the impugned gold and should have instead upheld the absolute confiscation of gold.
- (v) 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.
- (vi) 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.

6. The respondent was granted opportunity to be heard on 1.10.2018, 30.10.2018 and 6.11.2018. However, the respondent failed to avail of the opportunity to be heard. Shri Rajkumar Kulkarni, Superintendent(Review), CSI

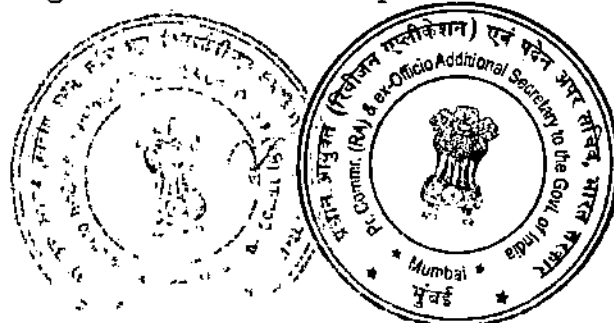


Airport appeared on behalf of the department on 1.10.2018. He reiterated the submissions made in the revision application and pleaded that the impugned Order-in-Appeal be set aside & revision application be allowed.

7. The Government has gone through the case records. On arrival at CSI Airport, Mumbai from Bangkok on 10.02.2014, the respondent was intercepted by Officers of the Air Intelligence Unit while he was proceeding towards the exit gate after he had cleared himself through the "Green Channel". The said passenger was found with Customs Declaration Form showing the details of the goods carried by him, where column no. 6 declaring value of imported goods had been shown as blank. The personal search of the said passenger was carried out in the presence of two independent panchas and in the presence of Gazetted Officers. The search resulted in the recovery of four cut pieces of gold wrapped in brown cello tape which was concealed inside the soles of the chappals worn by him. The total value of the 4 cut pieces of gold recovered from the respondent totally weighing 484 gms was collectively assessed at Rs. 12,30,899/- (Rupees Twelve Lakhs Thirty Thousand Eight Hundred Ninety Nine Only).

8. It is observed that in the Customs Declaration Form, the total value of dutiable goods imported was kept blank. In view of the non-declaration and the fact of having admitted carriage and possession of the impugned goods, it was established that the respondent had failed to declare the four cut pieces of gold to the customs as required under Section 77 of the Customs Act, 1962. It was therefore evident that the respondent intended to evade duty as he had not made true and correct declaration of the dutiable goods possessed by him. Moreover, the respondent had opted for the Green Channel instead of declaring the dutiable goods before the Customs Officer at the Red Channel.

9. In terms of the Baggage Rules, it was mandatory for a passenger to declare the goods in excess of admissible limits being imported and their value. Any goods imported in contravention of the restrictions imposed and non-declaration or mis-declaration thereof would render such goods liable to confiscation and the passenger would be liable for penal action for his acts of omission or commission.



10. The Commissioner(Appeals) has gone by the various judgments which hold that the option of redeeming the goods on payment of fine as provided for under Section 125 of the Customs Act, 1962 should invariably be extended. However, this is clearly a discretionary power vested in the proper officer and must be exercised diligently. In the present case, the respondent has attempted to smuggle in a huge quantity of gold. The gold was concealed in an ingenious manner. The four cut pieces of goods were wrapped in brown cello tape and concealed inside the soles of the chappals worn by the respondent. Needless to say, it was a carefully planned operation to evade payment of customs duty. Moreover, the respondent had admitted in his statement that the gold was being carried by him at the behest of one Shri Akhtar of Bangkok and that he was to be paid Rs. 30,000/- as consideration for carrying the gold.

11. The Government observes that the respondent had failed to file correct declaration, that he had admitted to being aware of the concealed gold, that he chose to walk through the Green Channel inspite of being in possession of gold which was far above the free allowance, that he had admitted that he was being paid to carry the gold in cash bear out the fact that he was clearly that he was aware of the illegality of the act of carrying gold in a concealed manner. All these factors point to a bigger racket of smuggling gold and the role of the respondent acting as a carrier.

12. If the respondent had not been intercepted by the officers of AIU, he would have evaded customs duty on the gold ingeniously concealed in the soles of the chappals he was wearing. Government is of the view that such acts of abusing the liberalized facilitation processes for genuine passengers should be dealt with firmly. The deterrents available in the law are required to be strictly enforced in such cases. Since the cut pieces of gold had been ingeniously concealed in the soles of the chappals the respondent was wearing, the Commissioner(Appeals) has erred in allowing redemption of such gold. The cut pieces of gold are required to be confiscated absolutely.

13. Government observes that the goods were liable to confiscation because of the acts of omission and commission by the respondent. The requirement of



filing a true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation on the passenger. If such declaration is found to be incorrect, as a natural corollary the penal provisions would come into play. In the present case, the respondent had not only imported gold but had also concealed it ingeniously and attempted to evade customs duty thereon by trying to clear these goods through the Green Channel facility. Government is of the view that such delinquency is required to be put down in a firm manner. In the circumstances, the Order-in-Appeal is set aside and the Order-in-Original passed by the adjudicating authority is restored.

14. The Revision Application is allowed.

15. So, ordered.

*Ashok Kumar Mehta*  
20.11.18

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

ORDER No. <sup>952</sup>/2018-CUS (WZ) /ASRA/MUMBAI

DATED 20.11.2018

To,  
Shri Roshan Ali  
90, Asurkhana Gali,  
1<sup>st</sup> Cross South Cross Street,  
Neelasandra, Bangalore 560047

**ATTESTED**

*S.R. Hirulkar*  
30.11.18

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

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

