

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-A/B/16-RA | 2009

Date of Issue 30.11.2018

ORDER NO. ⁹⁵⁹/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 12.11.2018
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 Vahab Saiyadmahammad Kadri

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-456&457/2015-16 dated 26.10.2015
passed by the Commissioner of Customs(Appeals), Mumbai-
III

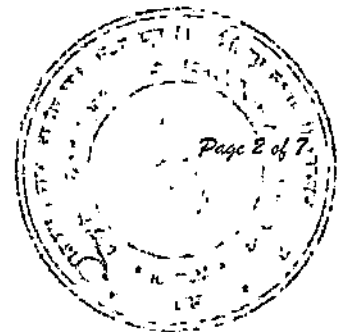


ORDER

This revision application has been filed by Commissioner of Customs(Airport), Mumbai against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-456&457/2015-16 dated 26.10.2015 passed by the Commissioner of Customs(Appeals), Mumbai-III(hereinafter referred to as the "Applicant") in respect of Shri Vahab Saiyadmahammad Kadri(hereinafter referred to as the "Respondent").

2. Briefly stated, on the basis of specific information, the respondent on arrival at CSI Airport, Mumbai from Nairobi on 23.08.2013 was intercepted by Officers of the Air Intelligence Unit while he was proceeding towards the exit gate after clearing himself through the Green Channel. Personal search of the respondent resulted in recovery of 256 gms of gold jewellery valued at Rs. 6,21,871/-(Rupees Six Lakhs Twenty One Thousand Eight Hundred Seventy One Only) which was concealed in the undergarment worn by him. Customs Declaration Form showing the details of the goods imported by the passenger indicated the value of imported goods in Column No. 9 as 0. The personal search of the said passenger was conducted in the presence of two independent panchas and in the presence of Gazetted Officers which resulted in the recovery of some yellow and white metallic jewellery purported to be gold which was kept in five plastics covered with cello tape which was further concealed in the undergarment worn by the passenger Mr. Vahab Saiyadmahammad Kadri. The total weight of the gold was 256 grams and its inventory is as detailed hereinbelow.

Sr. No.	Item of jewellery	Weight in grams
1	One piece gold bar	58 gms
2	Six pendants	9 gms
3	Ten thin chains	26 gms
4	Two thick chains	16 gms



5	Three bracelets	21 gms
6	Twenty five rings	79 gms
7	Mixed broken jewellery	30 gms
8	Eighteen earrings	17 gms

3.1 The total value of the gold recovered from the respondent totally weighing 256 gms was provisionally assessed at Rs. 7,22,720/- (Rupees Seven Lakhs Twenty Two Thousand Seven Hundred Twenty Only) and was seized by the officers under panchnama dated 23.08.2013 under the reasonable belief that the same was to be smuggled into India in contravention of the provisions of the Customs Act, 1962 and hence liable to confiscation under the provisions of the Customs Act, 1962. The valuation of the goods was done under Valuation Panchnama dated 21.11.2013 and the seized goods i.e. the assorted metallic jewellery purported to be gold jewellery was revalued at Rs. 6,21,871/- (Rupees Six Lakhs Twenty One Thousand Eight Hundred Seventy One Only).

3.2 The respondent in his statement dated 23.08.2013 stated that he had to deliver the gold jewellery to Smt. Saadia Yakub Abdallahi a Kenyan national who was waiting outside the airport; that in the past on the instructions of Smt. Saadia Yakub Abdallahi he had gone to Nairobi on 9 occasions and all these trips had been arranged and financed by her; that he used to carry readymade garments, imitation jewellery from Mumbai to deliver at her shop at Mall Manderia Shopping Centre, Easligh 4 Street, Goley, P.O. Box No. 11, Nairobi, Kenya; that she used to pay him Rs. 10,000/- per trip; that he is aware that non-declaration and clearance of gold jewellery is an offence and he admitted carriage, possession, recovery and knowledge of the gold jewellery concealed in his innerwear.

3.3 Smt. Saadia Yakub Abdallahi in her statement dated 23.08.2013 admitted that she used to send the respondent to Nairobi; that she sent the respondent 8 to 9 times to Kenya and that she came to CSI Airport, Mumbai to take delivery of the gold jewellery which was carried by the respondent; that she was in the business of readymade garments and imitation jewellery and that she arranges



all his travel expenses, accommodation and also pays him Rs. 10,000/- per trip; that she arranged to purchase the seized gold jewellery which the respondent had concealed in his innerwear out of her business income and personal savings; that she knew about the earlier packages handed over to the respondent by her husband Shri Isher Shaikh Bashir and that she agreed that she had directed the respondent to collect the seized gold jewellery from Ms. Cash Abdulla in Nairobi. The adjudicating authority had also referred another case vide F. No. SD/INT/AIU/64/2013 APA' wherein Smt. Saadia Yakub Abdallahi was issued show cause notice for her involvement in the smuggling of gold jewellery valued at Rs. 54,41,610/-.

4. While adjudicating the case, the adjudicating authority vide Order-in-Original No. ADC/ML/ADJN/66/2014-15 dated 18.09.2014 ordered for absolute confiscation of the goods and imposed penalty of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) on the respondent and Rs. 1,00,000/- (Rupees One Lakh Only) on Smt. Saadia Yakub Abdallahi alias Ms. Hoden respectively.

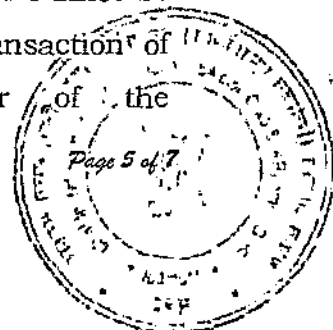
5. Aggrieved by the order of the adjudicating authority, the respondent and Smt. Saadia Yakub Abdallahi filed appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide Order-in-Appeal No. MUM-CUSTOMS-PAX-APP-456&457/2015-16 dated 26.10.2015 allowed redemption of the impugned goods on payment of fine of Rs. 2,50,000/- and upheld the penalty imposed on the respondent and Smt. Saadia Yakub Abdallahi mainly on the ground that there was no other claimant and although it was a case of systematic smuggling the quantity of seized gold was only 256 gms.

6. The Department found that the impugned Order-in-Appeal was not legal and proper and therefore filed revision application on the following grounds:

- (i) The respondent was intercepted by the officers of the Air Intelligence Unit while he was proceeding towards the exit gate after clearing through the Green Channel. Personal search of the respondent had resulted in recovery of 256 gms of gold jewellery valued at Rs. 6,21,871/- which was concealed in the undergarment worn by him. The respondent had opted for the Green Channel for clearance without declaring the gold jewellery. The method of concealment was not only ingenious but also premeditated.



- (ii) The respondent had failed to make a true declaration of the contents of his baggage as required under Section 77 of the Customs Act, 1962. Since the passenger had not declared the impugned goods on arrival, the Commissioner(Appeals) order to allow redemption of the goods was not proper.
- (iii) The respondent was not an "eligible passenger" and therefore the blatant misuse of the facility of opting to clear the goods through Green Channel by ingeniously concealing the gold jewellery in his underwear indicates the greed and criminal mindset of the respondent. Therefore, this was a fit case for absolute confiscation of the impugned goods.
- (iv) The lower authority had rightly ordered the absolute confiscation of the impugned gold jewellery. The respondent had not declared the gold jewellery being carried by him and it was detected only after he was diverted by the AIU and personal search was conducted. The gold jewellery was ingeniously concealed in the underwear worn by the respondent. Had the respondent not been intercepted by the officers, he would have made good with the ingeniously concealed gold jewellery in his underwear. Such acts of misusing the liberalised facilitation process should be dealt with by imposing exemplary punishment. The Commissioner(Appeals) ought not to have allowed redemption of the impugned gold and should correctly have upheld the orders for absolute confiscation.
- (v) Reliance was placed on the judgment of the Hon'ble Madras High Court in the case of Commissioner of Customs(Airport), Chennai-I vs. Samyanthan Murugesan[2009(247)ELT 21(Mad)] wherein the order of the original adjudicating authority for absolute confiscation of gold was upheld. The said case was affirmed by the Supreme Court as reported at [2010(254)ELT A15(SC)].
- (vi) Reliance was also placed upon the judgment of the Hon'ble Delhi High Court in the case of Jain Exports vs. UOI[1987(29)ELT 753(Del)] wherein the court had observed that "..... the resort to Section 125 of the CA, 1962, to impose fine in lieu of confiscation cannot be exercised to give a bonanza or profit for an illegal transaction" of imports." Therefore, on this ground the order of the

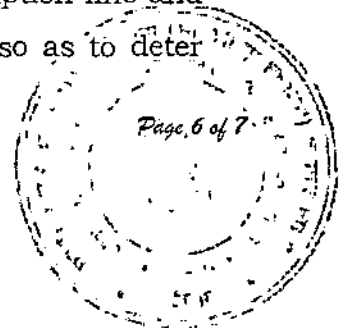


Commissioner(Appeals) was not proper in the eyes of law as the Commissioner(Appeals) has not mentioned that the goods in question were recovered from the innerwear which falls under the ambit of ingenious concealment.

7. 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.

8. The Government has gone through the case records. It is observed that the gold jewellery was found concealed in the undergarment worn by the respondent and it was recovered in the presence of independent panchas. The passenger had not declared the gold jewellery to the proper officer of customs. In so far as the method of concealing the gold jewellery is concerned, the Government is of the view that it cannot be termed as "ingenious concealment" as the gold jewellery 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. It would be pertinent to note that the section 125 of the Customs Act, 1962 does not differentiate between an owner and a carrier. 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 the gold jewellery to be redeemed on payment of fine and penalty. Government however 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 the gold jewellery, he did not declare it and therefore the redemption fine which is almost 40% of the value of the impugned goods is apposite. Smt. Saadia Yakub Abdallahi alias Ms. Hoden who has financed and arranged for the respondent to carry the gold jewellery even on previous occasions has dubious antecedents as noted by the adjudicating authority. However, no grounds have been made out in the Revision Application for enhancement of penalties imposed. The Order-in-Appeal is upheld.

9. Revision application is rejected.

10. So, ordered.

Ashok Kumar Mehta
12/11/18

(ASHOK KUMAR MEHTA)

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

ORDER No. ⁹⁵⁹/2018-CUS (WZ) /ASRA/MUMBAI.

DATED 12.11.2018

To,
Shri Vahab Saiyadmahammad Kadri
C/o Shri N. J. Heera, Advocate

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

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

