

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. 380/126-A/B/16-RA

22/6/18

Date of Issue 03.12.2018

ORDER NO. 961/2018-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 Musthafa Mannath

Subject : Revision Application filed under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. MUM-
CUSTM-PAX-APP-768/16-17 dated 7.04.2016 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-768/16-17 dated 7.04.2016 passed by the Commissioner of Customs(Appeals), Mumbai-III(hereinafter referred to as the "applicant") in respect of Shri Musthafa Mannath(hereinafter referred to as the "Respondent").

2. Briefly stated, the facts of the case are that on the basis of information from reliable sources, the respondent was intercepted by Officers of the AIU on arrival at CSI Airport, Mumbai from Riyadh. The respondent was intercepted while proceeding towards the exit gate after he cleared himself through customs 'Green Channel. Screening and search of the trolley bag and cardboard box carried by him in the presence of panch witnesses resulted in the recovery of 22 gold bars totally weighing 2552 gms of gold valued at Rs. 67,63,298/-(Rupees Sixty Seven Lakhs Sixty Three Thousand Two Hundred and Ninety Eight Only) found concealed in two car horns(16 gold bars) and mixer grinder(6 gold bars) from the brown coloured corrugated cardboard box which was seized under the provisions of the Customs Act, 1962.

3. The statement of the respondent was recorded wherein he stated that one Shri Shamshu of Riyadh had approached him and requested him to carry the gold from Riyadh to Mumbai; that he had promised free tickets and Rs. 65,000/- as commission for carrying the gold; that he was aware that gold was concealed in the two car horns and one mixer grinder kept in his check-in baggage by Shri Shamshu of Riyadh; that he did not declare the gold to avoid and evade customs duty as directed by Shri Shamshu; that Shri Shamshu had directed him that once he gets out of the Mumbai Airport he should call him and then Shri Shamshu would give him the details of the contact whom he should handover the said gold; that he knew that import of gold without declaration and payment of duty was an offence punishable under customs law and he also admitted possession, carriage, non-declaration, concealment and recovery of the seized gold.

4. A show cause notice no. 206/2014 dated 23.07.2014 was issued to the respondent proposing confiscation of the 22 gold bars totally weighing 2552 gms



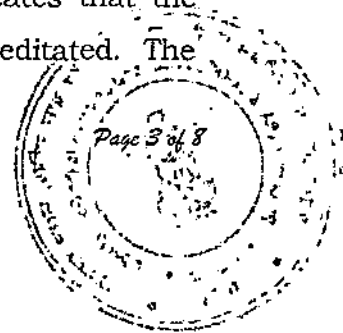
of gold valued at Rs. 67,63,298/- under Section 111(d), (l) and (m) of the Customs Act, 1962 and for imposition of penalty under Section 112(a) and (b) of the Customs Act, 1962.

5. The adjudicating authority ordered absolute confiscation of the 22 gold bars totally weighing 2552 gms under Section 111(d), (l), (m) of the Customs Act, 1962 and imposed penalty of Rs. 7,00,000/- under Section 112(a) and (b) of the Customs Act, 1962.

6. On appeal by the respondent, the Commissioner(Appeals) vide Order-in-Appeal No. MUM-CUSTOMS-PAX-APP-768/16-17 dated 7.04.2016 allowed release of the gold on payment of redemption fine of Rs. 11,00,000/- and upheld the penalty of Rs. 7,00,000/- imposed by the adjudicating authority on the respondent mainly on the ground that "The impugned goods are not prohibited for use by the society and release of the same will not cause any harm to the society and its import and/or redemption would not be danger or be detrimental to health, welfare or morals of the people as a whole in any circumstances." Commissioner(Appeals) has referred many judgments but mainly relied upon the judgment of Dhanak Ramji vs. UOI[2010(252)ELT A102(SC)] and judgment of CESTAT, Chennai in the case of A. Rajkumari vs. CC, Chennai[2015(321)ELT 540(Tri-Chen)].

7. The Department found that the Order-in-Appeal was not legal and proper and preferred a revision application on the following grounds:

- (i) Screening and search of the trolley bag and cardboard box in the presence of panch witnesses resulted in the recovery of 22 gold bars totally weighing 2552 gms of gold valued at Rs. 67,63,298/- found concealed in two car horns(16 gold bars) and mixer grinder(6 gold bars) which the passenger was carrying in a brown coloured corrugated cardboard box and which were seized under the provisions of the Customs Act, 1962. The passenger had opted for the Green Channel of customs clearance without declaring the aforesaid items in the customs declaration form as required which was in his possession. Therefore, the manner of recovery of gold clearly indicates that the concealment was not only ingenious but also premeditated. The



respondent admitted to possession, carriage, non-declaration, concealment and recovery of the seized gold.

- (ii) The respondent had also failed to make true declaration in the Customs Declaration Form about the contents of his baggage to the Customs as required under Section 77 of the Customs Act, 1962.
- (iii) The Commissioner(Appeals) referred to a number of judgments in the impugned O-in-A which do not apply to the present case as the gold recovered had been concealed ingeniously in two horns and mixer grinder found in the check-in baggage of the respondent.
- (iv) The Commissioner(Appeals) had also erred in granting release of seized gold by imposing redemption fine under Section 125 of the Customs Act, 1962. The manner in which the gold was imported by ingeniously concealing it in two car horns and mixer grinder kept in the check-in baggage show the criminal bent of mind and the clear intention to evade duty on dutiable goods and to smuggle them into India.
- (v) The absolute confiscation of the impugned 22 gold bars weighing 2552 gms recovered from the two car horns and mixer grinder kept in the check-in baggage of the respondent ordered by the adjudicating authority was correct as it is supported by the decision of the Hon'ble Supreme Court in the case of Samyanthan Murugesan vs. CC(Airport), Chennai-I[2010(254)ELT A15(SC)]. The said decision was rendered on appeal against the judgment of the Madras High Court[2009(247)ELT 21(Mad)]. In that case the passenger had tried to smuggle 7.075 kgs of gold ingeniously concealed in a TV set without making declaration and the adjudicating authority had absolutely confiscated the gold. The Hon'ble High Court had upheld the absolute confiscation of gold. While passing this judgment, the High Court observed that ".....the concealment had weighed with the Commissioner to order absolute confiscation. He was right, the Tribunal erred.". The Supreme Court after examining the High Court's judgment, upheld it. In the present case, the Commissioner(Appeals) has erred as the seized gold had been recovered from two car horns and mixer grinder kept in the check-in baggage of the respondent.



- (vi) The case law of Dhanak Ramji vs. UOI[2010(252)ELT A102(SC)] relied upon by the Commissioner(Appeals) does not apply to the present case as the aspect of ingenious concealment of gold was not the issue in the cited case.
- (vii) The Commissioner(Appeals) has referred to the case law of A. Rajkumari vs. CC, Chennai[2015(321)ELT 540(Tri-Chen)] to draw the conclusion that the impugned gold could be released on imposition of redemption fine and also stated that the Supreme Court had affirmed the order vide its order reported at [2015(321)ELT A207(SC)]. However, the Hon'ble Supreme Court has dismissed the appeal of the revenue without going into the merits only on grounds of delay.
- (viii) With regard to the redemption of the goods on imposition of fine, the judgment of the Hon'ble Delhi High Court in the case of Jain Exports vs. UOI[1987(29)ELT 753(Del)] was referred wherein it was held that:
 ".....the resort to Section 125 of the CA, 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports."

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 case records. The respondent was found to be in possession of one corrugated cardboard box as checked-in baggage. On screening the cardboard box, the officers noticed a dark image. On being asked, the respondent did not a proper reply about the reason for the dark image. The officers then decided to open the cardboard box and cut it open. They found two car horns and one mixer grinder in the cardboard box. They again screened the two car horns and mixer grinder and found the same dark images. Thereafter, on detailed examination of the two car horns and mixer grinder, the officers recovered 16 gold bars from the two car horns and



6 gold bars from the mixer grinder. These 22 gold bars were found to be totally weighing 2552 gms and were valued at Rs. 67,63,298/- which was taken over and seized by the officers.

10. It is observed that the total value of dutiable goods imported was kept as blank in the Gate Pass which was duly signed by him. 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 gold bars 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.

11. The Baggage Rules as amended, entitle a passenger to bring articles other than those mentioned in Annexure-I to the Appendix upto a value of Rs. 35,000/- whereas the respondent had brought goods i.e. 22 gold bars totally weighing 2552 gms valued at Rs. 67,63,298/- which was much higher than the permissible limit. Moreover, the respondent had opted for the Green Channel instead of declaring the dutiable goods before the Customs Officer at the Red Channel.

12. 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.

13. 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. In the present case, the respondent has attempted to smuggle in a huge quantity of gold. The gold was concealed in an ingenious manner. It was concealed

within two car horns and a mixer grinder. Needless to say, it was a carefully



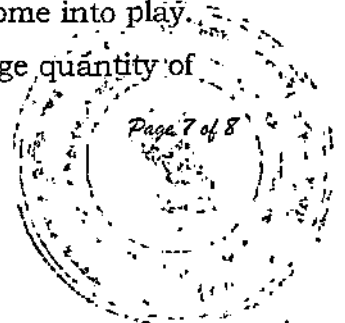
planned operation to evade payment of customs duty. Moreover, the respondent had admitted in his statement that the gold was being carried by him at the behest of one Shri Shamsu of Riyadh and that he was to be paid Rs. 65,000/- as commission and given free flight tickets to carry the gold.

14. 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 and with free air tickets, that he had subsequently attempted to retract his statement but simultaneously claimed ownership of the gold bear out clearly that he was aware of the huge consignment of gold he was carrying in his baggage. The Government observes that the respondent has failed to co-operate with the investigation when he was summoned to give evidence on 13.05.2014 and 1.07.2014. All these factors point to a bigger racket of smuggling gold and the role of the respondent acting as a carrier.

15. If the respondent had not been intercepted by the officers of AIU, he would have evaded customs duty on the gold ingeniously concealed in two car horns and mixer grinder kept in his check-in baggage. 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 gold bars were ingeniously concealed in the car horns and the mixer grinder kept in the check-in baggage, the Commissioner(Appeals) has erred in allowing redemption of such a huge quantity of gold. The gold bars were required to be confiscated absolutely.

16. 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 a huge quantity of



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.

17. The Revision Application is allowed.

18. So, ordered.

(Signature)
12/11/18

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

ORDER No. 961/2018-CUS (WZ) /ASRA/Mumbai

DATED 12.11.2018

To,
Shri Musthafa Mannath
C/o Shri P. K. Shingrani, 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

(Signature)
3/12/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

