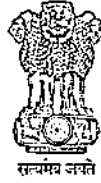


REGISTERED SPEED POST

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. 380/23/B/WZ/2017-RA / 2251

Date of Issue 03.12.2018

ORDER NO. <sup>972</sup>/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 28.11.2018  
 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 : Commissioner of Customs, Pune

Respondent : Ms. Sangeeta Raghunath Panjari

Subject : Revision Application filed under Section 129DD of the  
 Customs Act, 1962 against the Order-in-Appeal No. PUN-  
 EXCUS-001-APP-91-2017-18 dated 30.05.2017 passed by  
 the Commissioner(Appeals-I), Central Excise, Pune-I

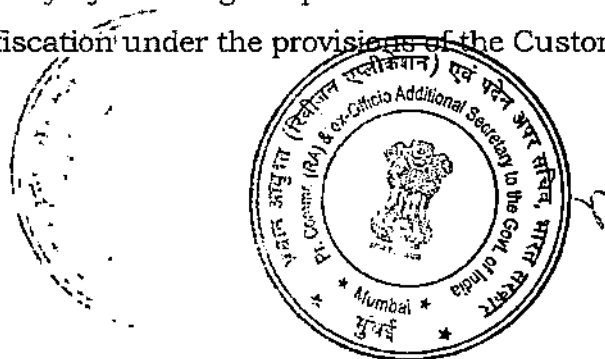


**ORDER**

This revision application has been filed by Commissioner of Customs, Pune against the Order-in-Appeal No. PUN-EXCUS-001-APP-91-2017-18 dated 30.05.2017 passed by the Commissioner(Appeals-I), Central Excise, Pune-I(hereinafter referred to as the "applicant") in respect of Ms. Sangeeta Raghunath Panjari(hereinafter referred to as the "Respondent").

2.1 Briefly stated, the facts of the case are that the respondent was intercepted by the Customs Officers due to the alarm of the DFMD(Door Frame Metal Detector) going off while she was passing through it on her arrival at Pune International Airport from Dubai on 28.10.2015. On querying her if she was carrying any contraband/prohibited good or if she had anything to declare, she replied in the negative. The respondent had submitted a NIL Customs Declaration. On suspicion, the respondent was examined and a personal search was conducted in the presence of two independent panchas. During the personal search of the respondent, two square shaped packets wrapped in black coloured adhesive tape were found concealed in the pockets of a blue coloured denim shorts worn underneath her clothes. The said packets were taken into possession by the Air Customs Superintendent. The Superintendent then asked her to open the packets recovered from her possession. When the packets were opened in the presence of two panchas, it was found that each packet contained nine pieces of yellow metal biscuits. In total, 18 biscuits were recovered.

2.2 The Govt. approved valuer Shri Dinesh N. Kalra was called to ascertain genuineness, purity, weight and to evaluate the yellow coloured metal biscuits. In the presence of the panchas, a detailed examination of the yellow coloured metal biscuits was carried out. Vide his certificate no. CAT-VIII/547, Bill No. 754 dated 28.10.2015, the valuer certified that the 18 yellow metal biscuits were made of 24 carat gold of 999.0 purity weighing 2099.66 gms and were valued at Rs. 56,77,480/-. Smt. Tanuja Gokhale, Superintendent Air Customs seized the 18 gold biscuits under panchanama dated 28.10.2015 in the reasonable belief that the gold biscuits were attempted to be smuggled into India with an intention to evade customs duty by violating the provisions of the Customs Act, 1962 and were liable for confiscation under the provisions of the Customs Act, 1962.



2.3 A detailed investigation was carried out. The statement of the respondent was recorded and her residence was searched. Amongst other facts, it was observed that the respondent had travelled to Dubai four times before in the year 2006 and she had travelled the fifth time on 20.10.2015 and arrived at Pune Airport on 28.10.2015. The respondent also stated that she had committed the mistake of attempting to smuggle the gold from Dubai out of greed for money.

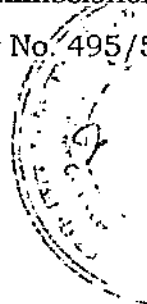
3. The respondent was therefore issued a show cause notice dated 18.04.2016 calling upon her to show cause why the seized gold biscuits totally weighing 2099.66 gms valued at Rs. 56,77,480/- should not be confiscated under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962; penal action should not be initiated under Section 112(a) & (b) of the Customs Act, 1962; penal action should not be initiated under Section 114AA of the Customs Act, 1962 for making false and incorrect declaration on customs declaration slip to evade customs duty.

4. The show cause notice was adjudicated by the Additional Commissioner vide Order-in-Original No. PUN-CUSTOM-000-ADC-25/16-17 dated 26.12.2016 by ordering absolute confiscation of the eighteen gold biscuits weighing 2099.66 gms collectively valued at Rs. 56,77,480/-, imposing penalty of Rs. 6,00,000/- under Section 112(a) & (b) of the Customs Act, 1962 and imposing penalty of Rs. 1,50,000/- under Section 114AA of the Customs Act, 1962.

5. Aggrieved, the respondent preferred appeal before the Commissioner(Appeals). The Commissioner(Appeals) vide his Order-in-Appeal No. PUN-EXCUS-001-APP-91-17-18 dated 30.05.2017 allowed redemption of the eighteen gold biscuits totally valued at Rs. 56,77,480/- on payment of fine of Rs. 14,10,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962 and modified the order-in-original to such extent.

6. The Department found that the Order-in-Appeal was not just, legal and proper for the following reasons:

- (i) The case laws relied upon by the Commissioner(Appeals) are not applicable to the present case.
- (ii) The Commissioner(Appeals) has incorrectly interpreted para 3 of CBEC Circular No. 495/5/92-Cus. VI dated 10.05.1993.



- (iii) The Commissioner(Appeals) has erred by not interpreting and applying the judgment of the Madras High Court in CMA No. 1631 of 2008 in the case of Commissioner of Customs(Air), Chennai vs. P. Sinnasamy, Om Prakash Bhatia vs. Commissioner of Customs, Delhi[2003(155)ELT 423(SC)].
- (iv) The Commissioner(Appeals) has erred in not considering the facts stated by the respondent in her statement dated 28.10.2015 wherein she had admitted that she had concealed the gold in denim pants in the toilet in Dubai Airport, that after reaching Pune Airport she had filed NIL Customs Declaration and tried to pass through the green channel, that she had in her statement dated 17.02.2016 reiterated the contents of her statement dated 28.10.2015 and 05.12.2015, that these facts were conclusive proof of her intention to smuggle gold by concealment.
- (v) The Department relied upon Revision Order No. 33/2016-Cus dated 22.03.2016 in the case of Commissioner of Customs, IGI Airport, New Delhi vs. Shri Raj Kumar Sabharwal wherein it was held that statement recorded under Section 108 of the Customs Act, 1962 before a Customs Officer has evidentiary value and was binding.
- (vi) The Commissioner(Appeals) has overlooked the ratio of the judgment of the Supreme Court in the case of Om Prakash Bhatia vs. CC[2003(155)ELT 423(SC)] and CBEC Circular No. 495/5/92-Cus. VI dated 10.05.1993 even after he had recorded findings holding that eighteen gold biscuits had been recovered from the inner garments worn by the respondent which were prohibited in nature on account of non-compliance of the statutory requirement and were rightly confiscated by the adjudicating authority while exercising his discretionary powers. The appellate authority had wrongly given the option to the respondent to redeem the smuggled gold on payment of redemption fine in lieu of confiscation under Section 125 of the Customs Act, 1962.
- (vii) On the basis of the above grounds, the Department has prayed that the Order-in-Original be restored; that the impugned Order-in-Appeal be



set aside; order may be passed for absolute confiscation of the smuggled eighteen gold biscuits.

7. In response to the show cause notice issued by the revisionary authority, the respondent rebutted the contentions of the Department in the revision application in the following manner:

- (i) That the gold carried by the respondent had not been concealed ingeniously and that no previous case had been registered against the respondent.
- (ii) It was contended that gold per se is not prohibited goods. Arms, ammunition and addictive substances viz. drugs would fall within the ambit of prohibited goods.
- (iii) The respondent further averred that the option of redeeming the goods in lieu of confiscation under Section 125 of the Customs Act, 1962 on payment of fine had correctly been extended. It was further stated that the respondent had brought the gold for her own business, that she had not declared the gold in the customs declaration form under Section 77 of the Customs Act, 1962 due to fear of being arrested.
- (iv) It was contended that the case laws of Yakub Ibrahim Yusuf vs. Commissioner of Customs, Mumbai[2011(263)ELT 685(Tri-Mum)], the Order-in-Original No. PUN-CUSTOMS-000-ADC-22/15-15 in the case of Smt. Shaheena Banu Hurmath, judgment dated 4.08.2009 of the Bombay High Court in UOI vs. Dhanak M. Ramji in W.P. No. 1397 with 1022 of 2009, judgment of the Andhra Pradesh High Court in the case of Shaik Jamal Basha vs. Govt. of India[1997(91)ELT 277(AP)], Order-in-Revision in the case of Mohd. Zia Ul Haque[2014(34)ELT 849(GOI)], Order-in-Original No. PUN-CUSTOMS-000-ADC-28/15-16 dated 29.02.2016 passed by ADC, Pune, CESTAT Order in the case of K. Kuttiyandi vs. Commissioner of Customs, Chennai in Appeal No. C/29/2000, judgment in the case of V. P. Hameed vs. Collector of Customs, Bombay[1994(73)ELT 425] and the judgment in the case of Sapna Sanjeev Kohli vs. Commissioner of Customs, Airport, Mumba[2008(230)ELT 305] were applicable to the facts of the case and

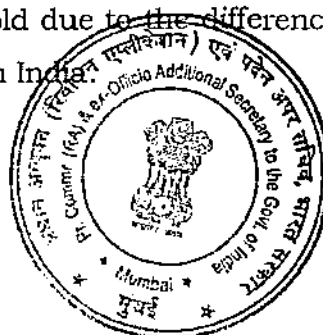


therefore the imposing of fine in lieu of confiscation was correct in terms of the provisions of Section 125 of the Customs Act, 1962.

- (v) On the basis of these submissions, the respondent prayed that the revision application filed by the Department be dismissed with costs, that the prayer for stay of operation of the impugned Order-in-Appeal be rejected with costs, that the exorbitant fine and penalty imposed in the impugned Order-in-Appeal be set aside and that the expenses of litigation be reimbursed by the Department.

8. Personal hearing in the matter was fixed on 19.11.2018. None appeared on behalf of the applicant Department. Ms. Sangeeta Raghunath Panjari and Shri Vinayak Kalgekar, Advocate appeared on behalf of the respondent. The respondent reiterated their submissions filed in reply to the revision application. They also submitted copies of a few case laws at the time of hearing. They pleaded that the impugned Order-in-Appeal be upheld and the revision application be dismissed.

9. The Government has gone through the case records. The respondent had filed NIL Customs Declaration and attempted to clear herself through the Green Channel. However, while she was passing through the Door Frame Metal Detector, it began to beep. In spite of being asked if she was carrying any dutiable goods, she replied in the negative. During personal search of her person, two square shaped packets wrapped in black coloured adhesive tape were found concealed in the pockets of a blue coloured denim shorts worn underneath her clothes. A total of 18 yellow metal biscuits weighing 2099.66 gms valued at Rs. 56,77,480/- were recovered. The respondent has varied her explanation for the gold seized from her. Initially she has claimed that she was acting as a carrier on behalf of a person named "Mr. Julfi" whom she used to meet at her food stall for monetary consideration of Rs. 10,000/-. However, at the time of replying to the show cause notice before the adjudicating authority, the respondent has stated that there is no person by the name of "Mr. Julfi". She also claimed that she was caught up with the idea of making lots of profit by smuggling in gold due to the difference in the rate of gold in Dubai as compared to the rate in India.



10. Government observes that the quantity of gold that the respondent had attempted to smuggle in was over 2 kgs. The gold was sought to be smuggled into the country in its primary form viz. as gold biscuits. It is observed that the total value of dutiable goods imported was kept as blank in the customs declaration form. 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 biscuits 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 she had not made true and correct declaration of the dutiable goods possessed by her.

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. 18 gold biscuits totally weighing 2099.66 gms valued at Rs. 56,77,480/- 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 the denim shorts which the respondent had worn below her clothes. In an attempt to avoid detection by the Customs authorities by the metal detectors/scanners etc., the gold biscuits had been



wrapped in coloured adhesive tape. Needless to say, it was a carefully planned operation to evade payment of customs duty.

14. The Government observes that the respondent had failed to file correct declaration, that she had admitted to attempting to smuggle gold to make big profits. She chose to walk through the Green Channel inspite of being in possession of gold which was far above the free allowance. In the reply filed in response to the revision application filed by the Department, she has feebly claimed that she did not declare the gold as she was afraid of being arrested. Her explanations do not cut much ice.

15. If the respondent had not been intercepted by the customs officers, she would have evaded customs duty on the gold biscuits concealed in the denim shorts worn below her clothes. 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 biscuits had been concealed with the objective of avoiding detection by the customs officers, the Commissioner(Appeals) has erred in allowing redemption of substantial quantity of gold by imposing fine of only Rs. 14,10,000/-. The redemption fine is required to be increased to make it commensurate to the offence committed by the respondent. No penalty is imposable under Section 114AA of the Customs Act, 1962 in baggage cases.

16 Government observes that the respondent has no previous offences registered against her. 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. These judgments also do not distinguish between concealment of goods as ingenious or otherwise while allowing them to be redeemed. It is observed that the Commissioner(Appeals) has discussed the issue at length and also the various judgments on this point. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold biscuits 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 bar, she 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 therefore liable to be set aside.

17. The impugned Order in Appeal is set aside. The Government allows redemption of the gold biscuits weighing 2099.66 gms valued at Rs. 56,77,480/- (Rupees Fifty Six Lakhs Seventy Seven Thousand Four Hundred Eighty Only). The redemption fine imposed is increased from Rs. 14,10,000/- (Rupees Fourteen Lakhs Ten Thousand Only) to Rs. 20,00,000/- (Rupees Twenty Lakhs Only) under section 125 of the Customs Act, 1962. The penalty of Rs. 6,00,000/- (Rupees Six Lakhs Only) imposed on the Respondent under Section 112(a) and Section 112(b) of the Customs Act, 1962 is reduced to Rs. 5,00,000/- (Rupees Five Lakhs Only). The penalty imposed under Section 114AA of the Customs Act, 1962 is set aside. The customs duties as applicable shall be payable in terms of Section 125(2) of the Customs Act, 1962.

18. Revision application is disposed off on the above terms.

19. So, ordered.

*Ashok Kumar Mehta*  
28.11.18

(ASHOK KUMAR MEHTA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. <sup>972</sup> /2018-CUS (WZ) /ASRA/MUMBAI

DATED 28.11.2018

To,  
Ms. Sangeeta Raghunath Panjari  
New Hanuman Nagar,  
R. No. 40, Pragati Seva Sangh,  
Goregaon(West),  
Mumbai 400 104



Copy to:

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3. Sr. P.S. to AS (RA), Mumbai
- ~~4.~~ Guard File
5. Spare Copy

