

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. 380/47/B/16-RA / 2296

Date of Issue 05/12/2018

ORDER NO. 976/2018-CUS (WZ) / ASRA / MUMBAI/ DATED 07.11.2018 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 : Principal Commissioner of Customs (Airport), Mumbai.

Respondent : Shri Syed Furkhan Abbas

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-629/2015-16 Dated 28.01.2016 passed by the Commissioner of Customs (Appeals), Mumbai - III.



ORDER

This revision application has been filed by Commissioner of Customs, Mumbai, (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-629/2015-16 Dated 28.01.2016 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. On 13.06.2014 the respondent arrived at the CSI Airport from Bangkok. Examination of his person resulted in the recovery of a gold wrist watch dial valued at Rs. 13,91,872/- ( Rupees Thirteen lakhs Ninety one thousand Eight hundred and Seventy two).

3. After due process of the law vide Order-In-Original No. JC/RR/ADJN/288/2014-15 dated 12.03.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 1,25,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal MUM-CUSTOM-PAX-APP-629/2015-16 Dated 28.01.2016 set aside the absolute confiscation of the gold wrist watch dial and allowed its redemption on payment of redemption fine of Rs. 2,80,000/-, and upheld the penalty of Rs. 1,25,000/- and partly allowed the appeal of the respondent.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

5.1 The Order of the Commissioner (Appeals) is neither legal nor proper; In the instant case the personal search of the passenger by the Air Intelligence officers had resulted in the recovery of a gold wrist watch dial worn by him; The gold wrist watch dial was covered by a full sleeved shirt. It is an admitted fact that the passenger failed to make a true declaration. As the passenger has not made a true declaration the Commissioner ( Appeals ) order allowing redemption of the golds is not proper; Taking the above facts of blatant misuse of the green channel into consideration and the concealment being ingenious and clever it is a fit case for absolute confiscation; The option of redemption of the goods is the discretionary power of the Adjudicating authority; The manner of concealment showed the criminal bent of mind and a clear intention to evade customs duty; Had the



passenger not been intercepted the passenger would have escaped the payment of duty; Such misuse of the liberalized facilitation process should be meted out with exemplary punishment; The redemption fine and penalty should shall depend on the facts and circumstances of the case and cannot be binding as a precedent; Taking the facts of the case into consideration the Adjudicating authority had rightly confiscated the gold absolutely; Therefore, the order of the Commissioner (Appeals ) is not proper in the eyes of law.

5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority and the order in original be upheld or such an order as deemed fit.

6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was held on 01.10.2018, Shri R. P. Kulkarni, Superintendent and re-iterated the submissions made in the revision application. Personal hearing was again scheduled on 30.10.2018 and 06.11.2018. However, neither the Respondent nor his advocate attended the any of the said hearing. The case is therefore being decided on merits.

7. The Government has gone through the case records it is observed that the gold wrist watch dial was worn by the Applicant and covered by a full sleeved shirt, though concealed, it does not appear to have been indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, thus, mere non-submission of the declaration cannot be held against the Applicant.

8. 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. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. The gold though not concealed ingeniously, it was required to be declared as per section 77 of the Customs, Act, 1962 and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore needs to be modified.



9. The impugned Order in Appeal is set aside. The Government allows redemption of the goods, valued at Rs. 13,91,872/- ( Rupees Thirteen lakhs Ninety one thousand Eight hundred and Seventy two). The redemption fine of Rs. 2,80,000/- ( Rupees Two lakhs eighty thousand) is increased to Rs.4,00,000/- ( Rupees Four lacs ) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty of Rs. 1,25,000/- ( Rupees One lakh Twenty five thousand ) imposed on the Respondent under section 112(a) of the Customs Act,1962. The same is upheld.

10. Revision application is partly allowed on above terms.

11. So, ordered.

*(Signature)*  
27.11.18

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

ORDER No. 976/2018-CUS (WZ) /ASRA/MUMBAI

Dated: 27.11.2018

To,

1. The Principal Commissioner of Customs (Airport),  
Chatrapati Shivaji International Airport,  
Terminal -2, Mumbai.
2. Shri Syed Furkhan Abbas  
191, Alipur-5,  
Gowribidannur Tq.,  
Chikballapur,  
Karnataka-561 213.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III
2. Sr. P.S. to AS (RA), Mumbai.
- ✓ 3. Guard File.
4. Spare Copy.

**ATTESTED**

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

