

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. 380/42/B/16-RA

2293

Date of Issue

05/12/2018

ORDER NO. ⁹⁹⁰ /2018-CUS (WZ) / ASRA / MUMBAI DATED 27.11.2018 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 : The Principal Commissioner of Customs, CSI Airport, Mumbai.

Respondent : Shri Mohamed Naqi Ibrahim Tai.

Subject : Revision Application filed, under Section 129DD of the Customs
Act, 1962 against the Order- in-Appeal No. MUM-CUSTOM-
PAX-APP-601-15-16 dated 25.01.2016 passed by the
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This revision application has been filed by Principal Commissioner of Customs, CSI Airport, Mumbai (herein referred to as Applicant) against the Order in Appeal No. MUM-CUSTOM-PAX-APP-601-15-16 dated 25.01.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

2. Based on suspicious movements, Shri Mohamed Naqi Ibrahim Tai (herein referred to as "the respondent") was intercepted by the officers of Air Intelligence Unit at the CSI Airport, Mumbai on his arrival from Goa on 25.08.2014. During the personal search of the respondent, resulted in the recovery of four gold bars totally weighing 466 gms and valued at Rs.12,15,911/- (Rupees Twelve Lakh Fifteen Thousand Nine Hundred Eleven Only). The respondent in his statement informed the officers that the said packet was handed over by one person who had come from Dubai by Flight No. 9W-537 at the time of immigration near immigration area with an instruction to hand over the same to him outside the Airport. The respondent told that he was assured the monetary benefit of Rs. 5,000/- for this act.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/44/2015-16 dated 25.05.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold and imposed a penalty of Rs. 1,20,000/- under Section 112 (a) & (b) of the Customs Act,1962 on the Respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-601-15-16 dated 25.01.2016 gave option to the respondent to redeem the gold on payment of redemption fine of Rs. 1,90,000/-. The Appellate Authority upheld the penalty of Rs. 1,20,000/- imposed by the adjudicating authority.

5. Aggrieved with the above order the Department has filed this revision application on the grounds that the option to redeem the seized goods under Section 125 of the Customs Act, 1962 is the discretionary power of the Adjudicating Authority depending on the facts of each case and after examining the merits. The Department requested that the Order in Appeal be set aside and uphold the order in original.



6. A personal hearing in the case was held on 01.10.2018, Shri R.P. Kulkarni, Superintendent attended the hearing on behalf of the Department. He re-iterated the submissions filed in Revision Application. The Respondent also appeared for a personal hearing on 15.11.2018 and submitted that he is not a habitual offender and requested for a lenient view and that the order of the Commissioner (Appeals) be upheld and the Revision Application be dismissed.

7. The Government has gone through the case records and it is seen that the respondent arrived at the CSI Airport on 25.08.2014 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of four gold bars of 10 tola each kept concealed in his pocket of the pants worn by him, hence confiscation of the gold is justified.

8. However, the Government notes that the gold was recovered from his pant pockets and the respondent has not concealed the gold ingeniously. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. There are no instances of any previous offences recorded against the Respondents. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant.

9. 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 Respondent had concealed the gold in his pant pockets and though it was not concealed ingeniously, he did not declare it and therefore the redemption fine cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore needs to be modified.



10. The impugned Order in Appeal is set aside. The Government allows redemption of the gold, totally weighing 466 gms and valued at Rs.12,15,911/- (Rupees Twelve Lakh Fifteen Thousand Nine Hundred Eleven Only). The redemption fine of Rs. Rs. 1,90,000/- (Rupees One lakh Ninety thousand) is increased to Rs. 3,00,000/- (Rupees Three lakhs) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty. The penalty of Rs. 1,20,000/- (Rupees One lakh Twenty thousand) imposed on the Respondent under section 112(a) of the Customs Act,1962 is reduced to Rs. 75,000/- (Rupees Seventy Five thousand) .

11. The Revision Application is allowed in terms of above.

12. So, ordered.

(Signature)
27.11.18

(ASHOK KUMAR MEHTA)

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

ORDER No. ⁹⁹⁰/2018-CUS (WZ) /ASRA/MUMBAI. DATED 27.11.2018

To,

1. The Principal Commissioner of Customs,
T-2, C.S.I. Airport, Mumbai – 400 099.
2. Shri Mohamed Naqi Ibrahim Tai,
58, Binani Street, Mugal House,
Room No. 8, 2rd Floor,
Near Paydhoni, Mumbai 400 003.

Copy to:

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

ATTESTED

(Signature)
5.12.18

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

