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Mumbai-400 005

F.No. 380/76 to 78/B/16-RA | 235 |

Date of Issue 12.12.2018

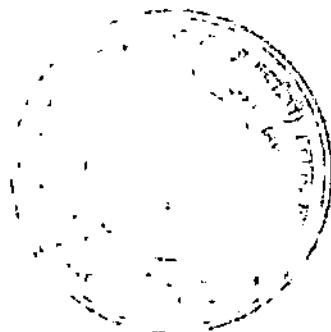
1021-1023

ORDER NO. /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.11.2018 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 (Airport), Chennai.

Respondent : Smt. Siti Noarazarul Yanie Binti  
Smt. Masitah Binti Ahmad Tallah  
Shri Kamarudeen Bin Mohamed Ismail

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 659, 660 & 661 dated 10.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.



## ORDER

This revision application has been filed by Commissioner of Customs, Chennai, (herein referred to as Applicant) against the Order in Appeal No. C. Cus-I No. 659, 660 & 661 dated 10.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

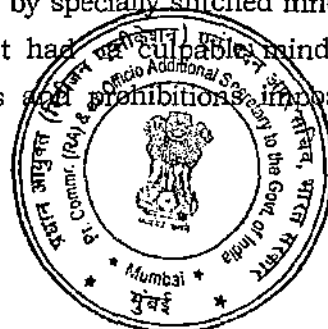
2. On 01.05.2014 the respondent Smt. Siti Noarazarul Yanie Binti a Malaysian was intercepted at the Chennai Airport as she was walking out of the green Channel and Two gold bars totally weighing 2000 grams valued at Rs. 51,35,740/- ( Rupees Fifty one lakhs Thirty five thousand Seven hundred and Forty ) was recovered from a specially stitched inner pocket on the jeans worn by her. In her voluntary statements she informed that the gold was handed to her by one Shri Kamarudeen Bin Mohamed Ismail and Smt. Masitah Binti Ahmad Tallah who had arrived on the same flight and were waiting outside the airport.

3. After due process of the law vide Order-In-Original No. 59/30.04.2015 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) and (l) of the Customs Act, 1962, but allowed redemption of the same for re-export on payment of redemption fine of Rs. 25,00,000/- and also allowed redemption of the jeans on payment of Rs. 1,000/- and imposed penalty of Rs. 2,00,000/- on Smt. Siti Noarazarul Yanie Binti, Rs. 3,00,000/- on Shri Kamarudeen Bin Mohamed Ismail and Rs. 1,50,000/- on Smt. Masitah Binti Ahmad Tallah under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by the said order, the Respondents filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus-I No. 659, 660 & 661 dated 10.10.2015 reduced the redemption fine to Rs. 15,00,000/- and also reduced the penalty to Rs. 1,00,000/- on Smt. Siti Noarazarul Yanie Binti, Rs. 1,50,000/- on Shri Kamarudeen Bin Mohamed Ismail and Rs. 1,00,000/- on Smt. Masitah Binti Ahmad Tallah and allowed the Appeal of the Respondents.

4. Aggrieved with the above order the Applicants have filed this revision application inter alia on the grounds that;

4.1 The Order of the original adjudicating authority and the order of the Commissioner (Appeals) are both neither legal nor proper as the passenger had attempted to smuggle the gold by specially stitched inner pocket on the jeans worn by her.; The respondent had a culpable mind to smuggle the gold circumventing the restrictions and prohibitions imposed; In her voluntary



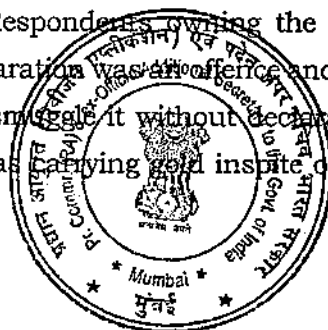
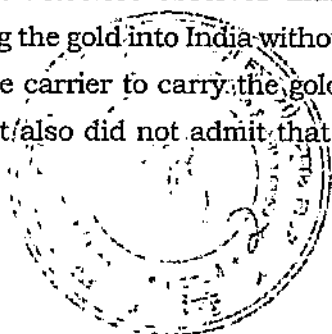
statement she stated that the gold did not belong to her and she had carried the same for other two respondents, who have been penalized along with her, for monetary gains; The retraction of the statements of the respondents is an after thought to secure release of the gold; The respondents did not declare the gold as required contravened the section 77 of the Customs Act, 1962 and were not in possession of foreign currency required to pay Customs duty, the gold under import becomes therefore becomes prohibited; The allowing of redemption of the gold is therefore is not correct; In this case the Respondent has not made any declaration and therefore the order reducing the redemption fine and penalty by the Commissioner (Appeals) in the Appellate order is not in order and may have an encouraging effect on smuggling.

5.2 The Revision Applicants cited case laws in support of their case and prayed that the order of the Appellate authority may be set aside or such an order as deemed fit.

5. 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 scheduled on 27.08.2018, 17.09.2018 and 26.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits.

6. The Government has gone through the case records, the Respondents had not declared the gold as required under section 77 of the Customs, Act, 1962, and therefore the confiscation of the gold is justified.

7. It is observed that the gold was concealed in the a specially stitched inner pocket on the jeans worn by the Respondent carrying the gold, though concealed, the Government notes that it cannot be considered that the gold was indigenously concealed. There is also no allegation that the Respondent has any past history of such misdemeanors. Gold is restricted and not prohibited and the respondents are Malaysian citizens. The ownership of the gold is not disputed. The Order in Original has therefore rightly allowed the gold for re-export on appropriate redemption fine and penalty. The other two respondents who owned the gold had planned the whole operation so as to avoid detection and evade Customs duty and bring the gold into India. Government therefore observes that the Respondents owning the gold were aware that bringing the gold into India without declaration was an offence and therefore they influenced the carrier to carry the gold and smuggle it without declaration. The carrier Respondent also did not admit that she was carrying gold inspite of repeated



questioning by the Customs officers. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. Government also notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. In view of the above the order of the Commissioner reducing the redemption fine and penalties on each of the Respondents for release of the gold is not proper and is therefore liable to be set aside and the order of the Original Adjudicating Authority is therefore liable to be upheld.

9. Government therefore sets aside the Order in Appeal C. Cus-I No. 659, 660 & 661 dated 10.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai. The Order-In-Original No. 59/30.04.2015 issued by the Original Adjudicating Authority is upheld as legal and proper.

10. The Revision Application is allowed on above terms.

11. So, ordered.

*Ashok Mehta*  
30.11.18

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

1021-1023  
ORDER No. /2018-CUS (WZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

1. Commissioner of Customs, (Airport) Chennai,  
Anna International Airport,  
Meenambakkam, Chennai.
2. Smt. Siti Noarazarul Yanie Binti
3. Shri Masitah Binti Ahmad Tallah
4. Smt. Kamarudeen  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High Court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

**ATTESTED**

*S.R. Hirulkar*  
12.12.18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

Copy to:

5. The Commissioner of Customs (Appeals) Chennai.
6. Sr. P.S. to AS (RA), Mumbai.
7. Guard File.

