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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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F.No. 380/22/B/16-RA | 2304

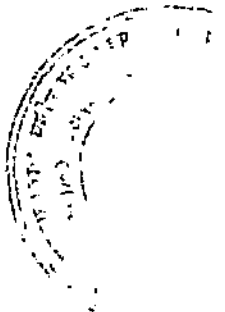
Date of Issue 13/12/2018

ORDER NO. <sup>1049</sup> /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 : Principal Commissioner of Customs (Airport), Chennai

Respondent: Shri Syed Shafi Ahmed

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
611 & 612/2015 dated 28.09.2015 passed by the  
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs, Chennai. (herein referred to as Applicant) against the Order in Appeal No. 611 & 612/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals, Chennai.

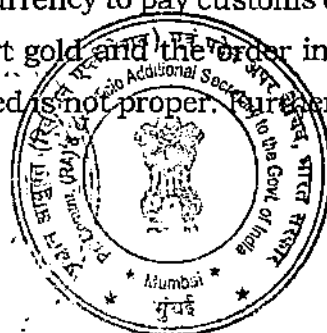
2. Briefly stated the facts of the case is that the Respondent, arrived at the Anna International Airport on 22.12.2014. He was intercepted as he was attempting to cross the green channel, and examination of his baggage and person resulted in the recovery of one gold bit weighing 651 grams and valued at Rs. 16,46,027/- ( Rupees Sixteen lakhs Forty six thousand and Twenty Seven) from the specially tailored pockets of the pants worn by him.

3. After due process of the law vide Order-In-Original No. 50/2015-16 AIRPORT dated 28.04.2015 the Original Adjudicating Authority ordered confiscation of the gold bit under Section 111 (d) (1) (m) and (o) of the Customs Act, 1962, but allowed redemption of the gold for re-export on payment of Rs. 5,50,000/- and imposed penalty of Rs. 1,50,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the respondent as well as the department filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 611 & 612/2015 dated 28.09.2015 reduced redemption fine for re-export to Rs. 4,00,000/-and also reduced the penalty to Rs. 75,000/- and allowed the appeal of the respondent. The Appeal of the Department was rejected as devoid of merits.

5. Aggrieved with the above order the Applicant have filed this revision application interalia on the grounds that;

5.1 The respondent did not declare the gold as required contravened the section 77 of the Customs Act, 1962 and has therefore contravened the provisions of the Customs Act, 1962; The order of the Commissioner (Appeals) in granting redemption and re-export overlooks the fact that the passenger is not eligible to import gold as he had not stayed abroad for the period of six months as mandated; The passenger also did not have the required foreign currency to pay customs duty; Therefore the passenger was ineligible to import gold and the order in Appeal permitting the smuggled gold to be redeemed is not proper. Further the Respondent in his statement



has stated that the gold was given to him by an acquaintance in Kuwait and was not the owner of the gold. Re-export of the gold is covered vide section 80 of the Customs Act, 1962, and is mandated only when a true declaration is made vide section 77 of the Customs Act, 1962. In this case the Respondent has not made any declaration and therefore the order for re-export is not in order.

5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority or any such 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 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.

7. Government has gone through the facts of the case, the respondent had attempted to import the gold without declaration and therefore confiscation of the same is justified and upheld.

8. However, the facts of the case state that the Respondent had not yet cleared the Green Channel. The gold bit was recovered from the pockets of the pants worn by the Respondent and there is no allegation that the gold was ingeniously concealed. Import of gold is restricted not prohibited. There is no reference of any previous offence registered against the respondent. The ownership of the gold is not disputed. Under the circumstances the absolute confiscation of the seized with the gold is harsh and unjustified. 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 regard to goods that are not strictly prohibited. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold for re-export 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 did not declare the gold and therefore the redemption fine cannot be as low as



ordered in the order in Appeal. The impugned Order in Appeal therefore is liable to be set aside and the therefore liable to be upheld.

9. Government therefore sets aside the Order in Appeal C. Cus-I. No. 611 & 612/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai. The Order-In-Original No. 50/2015-16 AIRPORT dated 28.04.2015 issued by the Original Adjudicating Authority is upheld as legal and proper.

10. Revision application is partly allowed on above terms.

11. So, ordered.

*Ashok Kumar Mehta*  
20.11.18

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

ORDER No. <sup>1049</sup>/2018-CUS (SZ) /ASRA/MUMBAI. DATED 20.11.2018

To,

1. The Principal Commissioner of Customs (Airport),  
New Custom House,  
Menambakkam Road,  
Chennai-27.
2. Shri Syed Shafi Ahmed  
Door No. 22-2-125, Pottary Street,  
Big Bazaar, Nellore,  
Andhra Pradesh.

Copy to:

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

