

REGISTERED

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GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 380/19/B/16-RA 2303

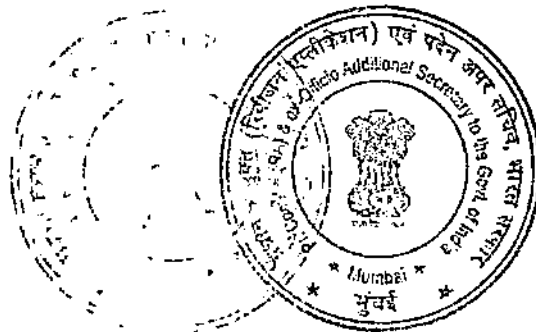
Date of Issue 13/12/2018

ORDER NO. <sup>1050</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 Govindan Shankar

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
674/2015 dated 30.10.2015 passed by the  
Commissioner of Customs (Appeals-II), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs, Chennai. (herein referred to as Applicant) against the Order in Appeal No. 674/2015 dated 30.10.2015<sup>§</sup> passed by the Commissioner of Customs (Appeals, Chennai).

2. Briefly stated the facts of the case is that the Respondent, arrived at the CSI Airport on 07.09.2015. 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 chain weighing 99.5 grams and two used laptops. The goods were totally valued at Rs. 2,45,443/- ( Rupees Two lakhs Forty five thousand Four hundred and Forty three).

3. After due process of the law vide Order-In-Original No. 938/ 2015 batch C dated 07.09.2015 the Original Adjudicating Authority ordered absolute confiscation of the gold chain and the used laptops under Section 111 (d) (1) (m) and (o) of the Customs Act, 1962, and imposed penalty of Rs. 20,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the respondent and the Applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal 674/2015 dated 30.10.2015<sup>§</sup> allowed the gold for redemption on payment of redemption fine of Rs. 75,000/ -, and allowed the appeal of the respondent, without interference in the penalty imposed.

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 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.



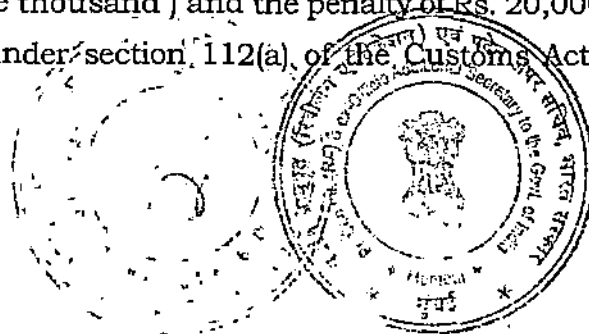
5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority and the order in original be upheld or such an order as deemed fit.

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 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 Applicant had not cleared the Green Channel. 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. The absolute confiscation of the used laptops seized with the gold is also 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 on redemption fine and penalty. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future.

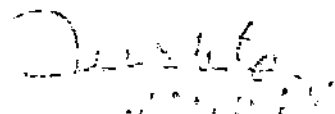
9. The Government holds that redemption fine imposed on gold weighing 99.5 grams and two used laptops totally valued at Rs. 2,45,443/- ( Rupees Two lakhs Forty five thousand Four hundred and Forty three) of Rs. 75,000/- ( Rupees Seventy Five thousand ) and the penalty of Rs. 20,000/- ( Rupees Ten thousand ) imposed under section 112(a) of the Customs Act, 1962 on the Applicant is



appropriate. Hence the order of the Appellate authority is liable to be upheld and Revision Application is liable to be dismissed.

10. Revision application is accordingly dismissed.

11. So, ordered.

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

ORDER No. <sup>1050</sup> /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,

1. The Principal Commissioner of Customs (Airport),  
New Custom House,  
Menambakkam Road,  
Chennai-27.
2. Shri Govindan Shankar  
S/o Govindan,  
No. 9, Janagaraj Street,  
Nehru Nagar, Devaraj Nagar,  
Saligramam,  
Chennai 600 093.

Copy to:

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

