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GOVERNMENT OF INDIA  
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F.No. 373/105/B/14-RA | 2377

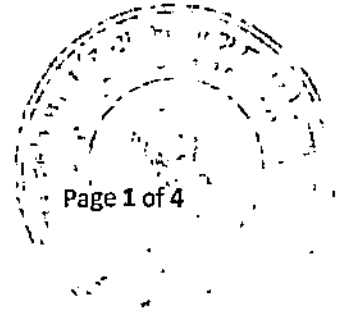
Date of Issue 13/12/2018

ORDER NO. <sup>1057</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 : Shri Abdul Razack Maricar

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal C. Cus  
No. 259/2014 dated 13.02.2014 passed by the  
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Abdul Razack Maricar (herein after referred to as the Applicant) against the order in appeal No. 259/2014 dated 13.02.2014 passed by the Commissioner of Customs (Appeals), Chennai.

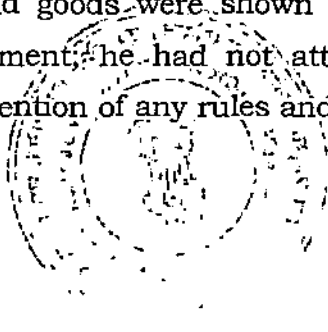
2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 13.08.2013. He was intercepted at the exit and examination of his person resulted in the recovery of three gold chains weighing 142 gms valued at Rs. 3,75,824/- ( Rupees Three Lakhs Seventy five thousand Eight hundred and twenty four ). The gold chains were recovered from his inner pant pockets worn brought by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 956/2013 Batch C dated 13.08.2013 ordered confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, but allowed redemption on payment of Rs. 70,000/- as redemption fine and imposed penalty of Rs. 50,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 259/2014 dated 13.02.2014 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that;

5.1 The order of the appellate authority is contrary to the law and probabilities of the case; The applicant submits that he had declared the three gold chains and there was no misdeclaration or non-declaration; No reliance can be taken of the statement taken under threat or coercion; He is an eligible passenger to import gold having worked in Singapore and stayed abroad for 10 months; There was no concealment of the gold; The said goods were shown to the authorities without hesitation or concealment; he had not attempted to import any of the goods in contravention of any rules and regulations; as he had declared the gold



to the authorities under section 77 of the Customs Act,1962 he has requested re-export as per section 80 of the Customs Act,1962; It is not known how It is not known on what basis the Customs authorities have concluded that the above goods are sensitive in a liberalized era; strong suspicion cannot take the place of positive proof; in a Writ petition filed by Shri T. Elavarasan before the Madras High Court it was ordered that the gold be released on fine and Customs duty, the gold was not declared by the passenger; There is no margin of profit and no worksheet has been provided for the valuation The reasons given by the Commissioner is not sustainable in law or based on any facts.

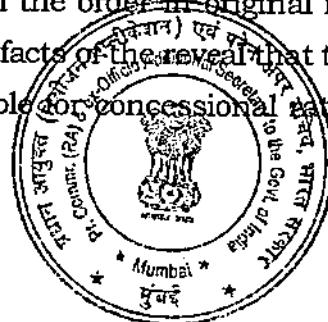
5.2 The Applicant submitted case laws in favor of his case and prayed for setting aside the Order in Appeal and allow the gold for re-export or pass further or other orders as deem fit and proper in the facts and circumstances of the case.

6. A personal hearing in the case was scheduled in the case, the Advocate for the respondent Shri A. K Jayaraj Advocate for the Revision Applicant attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for a lenient view in the matter and the Revision Application be allowed.

7. The Government has gone through the facts of the case. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. However, the facts of the case reveal that the Applicant was intercepted at exit. The impugned gold was carried by the applicant in his inner pant pockets and it was not ingenously concealed. Import of gold is restricted not prohibited. The Applicant has no past history of such misdemeanors. The ownership of the gold is not disputed. Mere non-submission of the declaration cannot be held against the Applicant.

8. The Government therefore agrees with the order in original for release of the gold on redemption fine and penalty. The facts of the reveal that the Applicant having stayed abroad for 10 months is eligible for concessional rate of duty. In



view of the above, the Government is of the opinion that a more lenient view can be taken in the matter. The Applicant has pleaded for release of the gold for re-export on payment of duty as applicable and reduce the fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. The Government allows redemption of the gold for re-export. The Government observes that the redemption fine of Rs. 70,000/- ( Rupees Seventy thousand ) under section 125 of the Customs Act, 1962 and penalty of Rs. 50,000/- ( Rupees Fifty thousand ) under section 112(a) of the Customs Act, 1962 on the gold weighing 142 gms valued at Rs. 3,75,824/- ( Rupees Three Lakhs Seventy five thousand Eight hundred and twenty four) to be appropriate and needs no intervention.

10. The impugned Order in Appeal is set aside and the order in original is restored. Revision application is allowed on above terms.

11. So ordered.



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

ORDER No. <sup>1056</sup> /2018-CUS (SZ) /ASRA/ Mumbai DATED 30.11.2018

To,

Shri Abdul Razack Maricar  
c/o M/s A.K. Jayaraj, Advocate  
New No. 3, Old No. 2, 1<sup>st</sup> Floor,  
Thambusamy Road,  
Kilpauk, Chennai 600 010.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs & Central Excise (Appeals), Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

