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SPEED POST

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 380/54/B/16-RA | 24/15 Date of Issue 19/12/2018

ORDER NO. <sup>1060</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 : Commissioner of Customs, Chennai.

Respondent : Shri Mohamed Sultan Sathik Basha

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal C. Cus-I  
No. 700/2015 dated 30.10.2015 passed by the  
Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs, Chennai (herein after referred to as the Applicant) against the order in appeal C. Cus-I No. 700/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

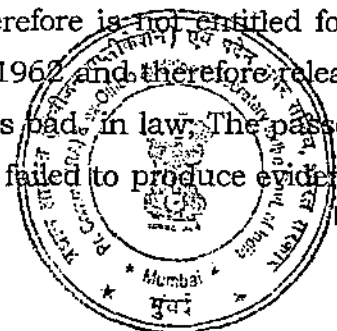
2. Briefly stated the facts of the case are that the Respondent arrived at the Anna International Airport on 15.02.2015. He was intercepted as he was walking out of the exit. Examination of his baggage and person resulted in the recovery of three gold bars totally weighing 349.5 grams, Rs. 9,64,620/- ( Rupees Nine Lakhs Sixty four thousand Six hundred and Twenty ). The gold was recovered from the pants worn by Respondent.

3. The Original Adjudicating Authority vide Order-In-Original No. 165/2015-16 AIR dated 29.06.2015 ordered absolute confiscation of the gold, and imposed a penalty of Rs. 90,000/- under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by the said order, the Respondent filed an Appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 700/2015 dated 30.10.2015 allowed redemption of the gold for re-export on payment of redemption fine to Rs. 2,80,000/- without interfering with the penalty imposed.

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

5.1 The order of the Commissioner (Appeals) is neither legal nor proper as the Applicant had brought the gold by way of concealment and non-declaration; the passenger failed to make a declaration as required under section 77 of the Customs Act,1962; He has not fulfilled any conditions making him eligible to import gold and he did not have the foreign currency as required to pay customs duty; Therefore the impugned gold becomes prohibited; The Respondent therefore is not entitled for the benefit of section 125 of the Customs Act,1962 and therefore release of the goods for re-export to the respondent is bad in law. The passenger claims to be the owner of the gold but has failed to produce evidence of



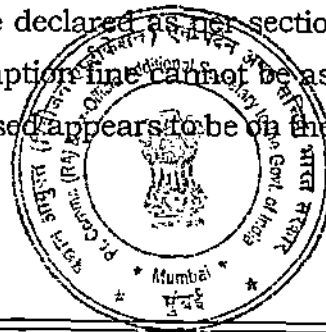
his financial soundness; In this case the Respondent has not made any declaration and therefore the order for re-export is not in order; The orders of the lower authorities has the effect of making smuggling an attractive proposition, since the passenger retains the benefit of redeeming the offending goods at lower redemption fine.

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 held on 17.01.2018, 21.02.2018 and 16.08.2018. However, neither the Respondent nor his advocate replied to the Show Cause Notice or 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 gold was recovered from his pant pockets and though concealed it cannot be considered as ingeniously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. There is no reference of any previous offence registered against the respondents. 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 prohibited. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is a very harsh option and cannot be justified. 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 gold though not concealed ingeniously, it was required to be declared as per section 77 of the Customs, Act, 1962 and therefore the redemption fine cannot be as low as ordered in the order in Appeal. The penalty imposed appears to be on the higher



side and could be reduced. The impugned Order in Appeal therefore needs to be modified.

9. The impugned Order in Appeal is set aside. The Government allows redemption of the gold, weighing 349.5 grams, and valued at Rs. 9,64,620/- ( Rupees Nine Lakhs Sixty four thousand Six hundred and Twenty ) for re-export. The redemption fine of Rs. 2,80,000/- ( Rupees Two lakhs Eighty thousand) is increased to Rs. 3,25,000/- ( Rupees Three lakhs Twenty five thousand ) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify reduction in the penalty, The penalty of Rs. 90,000/- ( Rupees Ninety thousand) imposed on the Respondent under section 112(a) of the Customs Act, 1962 is reduced to Rs.65,000/- (Rupees Sixty five thousand).

10. Revision application is partly allowed on above terms.

11. So, ordered.

*Ashok Kumar Mehta*  
30.11.18

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

ORDER No. <sup>1560</sup>/2018-CUS (SZ) /ASRA/MUMBAI DATED 30-11-2018

To,

1. The Commissioner of Customs (Airport),  
Anna International Airport,  
Meenambakkam,  
Chennai - -600 027.

2. Shri Mohamed Sultan Sathik Batcha  
114, East South Street,  
Labbaikudik, Kunnam Tk,  
Perambalur - 621 108.  
Tamil Nadu.

3. The Commissioner of Customs (Appeals), Chennai.

4. Sr. P.S. to AS (RA), Mumbai.

5. Guard File.

6. Spare Copy.

