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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 380/57/B/16-RA

Date of Issue 19/12/2018

ORDER NO. <sup>1077</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 : Smt. Suneetha Malkanthi Silva

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal C. Cus-I  
No. 690/2015 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. 690/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

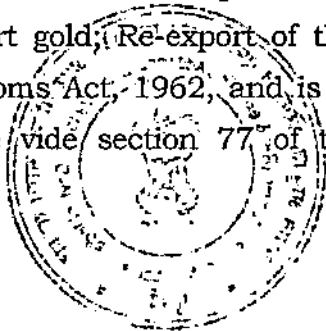
2. Briefly stated the facts of the case are that the Respondent a Sri Lankan National arrived at the Anna International Airport on 02.02.2015. Examination of his baggage and person resulted in the recovery of four gold pieces weighing 436 grams, Rs. 12,42,600/- ( Rupees Twelve Lakhs Forty two thousand Six hundred ). The gold was recovered from the innerwear worn by the Respondent.

3. The Original Adjudicating Authority vide Order-In-Original No. 105/2015-16-AIRPORT dated 03.06.2015 ordered confiscation of the gold BITS but allowed redemption of the same on payment of Rs. 5,50,000/- as redemption fine and imposed a penalty of Rs. 1,10,000/- was also imposed under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the Applicants filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. 690/2015 dated 30.10.2015 rejected the Appeal of the Applicants as devoid of merits.

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

5.1 5.1 The respondent did not declare the goods as required contravened the section 77 of the Customs Act, 1962 and has therefore contravened the provisions of the Customs Act, 1962; The passenger had attempted to smuggle the goods by way of non declaration knowing well that she was committing an offence and thus had a culpable mind to smuggle them into India without payment of duty; The order of the Commissioner (Appeals) in granting redemption and re-export overlooks the fact that the Respondent is a Sri Lankan citizen and is not eligible to import 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



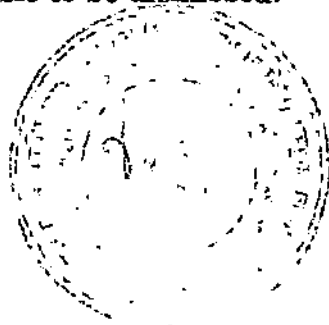
Respondent has not made any declaration and therefore the order for re-export is not in order; The orders of the lower authorities has the effect of making smuggling an attractive proposition, since the passenger retains the benefit of redeeming the offending goods at lower redemption fine.

5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority 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 held on 24.08.2018 and 12.09.2018. However, neither the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided *ex parte* 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.

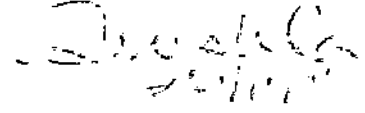
8. However, the facts of the case state that there is no allegation that Respondent had cleared the Green Channel. The gold bit were recovered from her innerwear and therefore cannot be considered as ingeniously concealed. Import of gold is restricted not prohibited. There is no reference of any previous offence registered against the respondent. The respondent claims ownership of the gold. Under the circumstances the absolute confiscation of the seized 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 on redemption fine and penalty. Government also notes that the redemption fine and penalties is commensurate to the offence committed so as to dissuade such acts in future. The impugned Order in Appeal therefore is liable to be upheld and the impugned Revision Application is liable to be dismissed.



9. Government therefore upholds the Order in Appeal No. 690/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai as being legal and proper.

10. The Revision Application is accordingly dismissed.

11. So, ordered.



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

ORDER No. <sup>1077</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. Smt. Suneetha Malkanthi Silva  
No. 302/1, Negombo Road,  
Maradaghamula,  
Sri Lanka.
3. The Commissioner of Customs (Appeals), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
- ~~5.~~ Guard File.
6. Spare Copy.

