

REGISTERED SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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F. No. 380/02/B/14-RA  
F. No. 380/61/B/14-RA / 2493

Date of Issue 20/12/2018

(100-110)

ORDER NO. /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, Trichy

Respondent : Shri S. Natarajan

Subject :Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. 90/2013  
dated 21.10.2013 passed by the Commissioner of Customs &  
Central Excise(Appeals), Trichy and Order-in-Appeal No.  
08/2014 dated 24.02.2014 passed by the Commissioner of  
Customs & Central Excise(Appeals), Trichy in respect of Shri  
S. Natarajan.



**ORDER**

These two Revision Applications have been filed by the Commissioner of Customs, Trichy(hereinafter referred to as the "Applicant") against the Order-in-Appeal No. 90/2013 dated 21.10.2013 passed by the Commissioner of Customs & Central Excise(Appeals), Trichy and Order-in-Appeal No. 08/2014 dated 24.02.2014 passed by the Commissioner of Customs & Central Excise(Appeals), Trichy in respect of Shri S. Natarajan(hereinafter referred to as the "Respondent").

2. On the basis of intelligence, the respondent was intercepted on arrival at Trichy Airport on 12.03.2012 by flight no. IX 681 while he was trying to clear himself through the Green Channel. The respondent was found to be in carrying one Samsung TV, one Sony Xperia mobile phone, one Sony Ericsson mobile phone and one Nikon Camera Flash, altogether totally valued at Rs. 43,000/- (Rupees Forty Three Thousand Only). The examination of his baggage and person resulted in the recovery of assorted gold jewellery totally weighing 122.100 gms and valued at Rs. 3,36,996/-(Rupees Three Lakhs Thirty Six Thousand Nine Hundred Ninety Six Only). The gold ornaments were recovered from his trouser pocket.

3. The case was adjudicated by the Assistant Commissioner of Customs, Trichy Airport vide Order-in-Original No. 148/2013 dated 20.07.2013 ordering confiscation of the impugned goods under Section 111(d), (l) and (m) of the Customs Act, 1962 but allowed redemption of the goods on payment of fine of Rs. 95,000/-(Rupees Ninety Five Only) and customs duties and imposed penalty of Rs. 60,000/-(Rupees Sixty Thousand Only) under Section 112(a) of the Customs Act, 1962 on the respondent.

4.1 Aggrieved by the order of the original authority, the respondent filed appeal before the Commissioner(Appeals) for reduction of the redemption fine and penalty imposed and for allowing free allowance. The Commissioner(Appeals) vide his Order-in-Appeal No. 90/2013 dated 21.10.2013 ordered that the duty be requantified after allowing free allowance of Rs. 35,000/-, reducing the



redemption fine under Section 125(1) of the Customs Act, 1962 to Rs. 60,000/- and reduced the penalty imposed under Section 112(a) of the Customs Act, 1962 to Rs. 35,000/-.

4.2 Similarly, the Department found that the order of the original authority was not legal and correct and therefore filed appeal against the said order on the ground that the goods should have been ordered to absolute confiscation and not have been allowed to be redeemed on payment of fine. The Commissioner(Appeals) vide his Order-in-Appeal No. 08/2014 dated 24.02.2014 upheld the Order-in-Original No. 148/2013 dated 20.07.2013 to the extent it was modified by Order-in-Appeal No. 90/2013 dated 21.10.2013.

5. The Department found that the Order-in-Appeal No. 90/2013 dated 21.10.2013 and Order-in-Appeal No. 08/2014 dated 24.02.2014 were both not legal and correct and therefore filed Revision Applications on the following grounds:

- (i) The respondent in the present case is not an eligible passenger and therefore the benefit of concessional rate of duty should not have been allowed;
- (ii) The appellate authority's decision that Section 111(d) of the Customs Act, 1962 would not be invocable is not correct as the respondent is not an eligible passenger, did not declare the goods to the customs authorities as mandated by Section 77 of the Customs Act, 1962 and therefore the goods had become prohibited goods liable to be confiscated;
- (iii) The goods had been illegally imported by concealing them and passing them off as bonafide baggage and therefore they should have been confiscated absolutely;
- (iv) The order passed by the appellate authority allowing free allowance and re-quantifying duty on the reduced value of the goods, thereby reducing the redemption fine and penalty is not in order as the value of the gold imported by the respondent was not taken into consideration by the appellate authority.



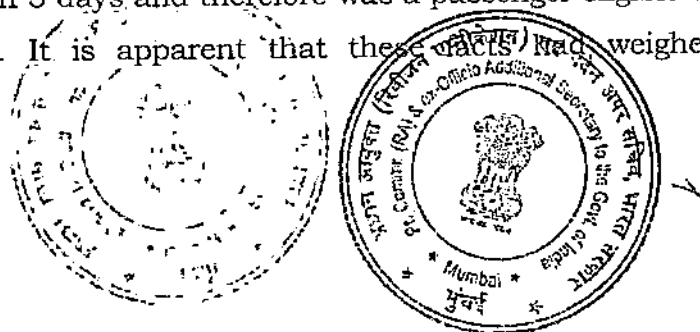
6. The respondent filed a reply in response to the Revision Application filed by the Department. The respondent made the following submissions:

- (i) The Notification No. 03/2012-Cus dated 16.01.2012 is an exemption notification for availing concessional rate of duty on import of gold. The conditions imposed therein are for availing exemption are for availing exemption and not for import of gold.
- (ii) The legal provisions referred to in the grounds of appeal of the Departmental appeal are not relevant for absolutely confiscating the goods.
- (iii) No exemption was allowed by the adjudicating authority. No portion of the gold was allowed to be cleared duty free. Therefore, the reference made to Section 79 of the Customs Act, 1962 in support of the prayer for absolute confiscation is not relevant.

7. Personal hearings were granted in the matter on 17.07.2018, 20.08.2018 and 10.09.2018. However, none appeared from either side. Therefore, the case is taken up for decision on the basis of the facts on record.

8. The Government has carefully gone through the case records. It is observed that the respondent had attempted to clear himself through the Green Channel. On the basis of intelligence, the Officers of Air Intelligence Unit, Trichy intercepted the respondent and carried out a detailed examination of all baggages of the passenger. One Samsung TV was found along with his baggage. One Sony Xperia mobile phone, one Sony Ericsson mobile phone was found in his trouser pocket. One Nikon Camera Flash was found in a black colour laptop bag. These goods were totally valued at Rs. 43,000/- (Rupees Forty Three Thousand Only). Besides these, search of the passenger resulted in the recovery of assorted items of gold totally weighing 122.100 gms and valued at Rs. 3,36,996/- (Rupees Three Lakhs Thirty Six Thousand Nine Hundred Ninety Six Only) from his trouser pocket.

9. Government observes that the passenger had stayed abroad for a period of more than 3 days and therefore was a passenger eligible for free allowance of Rs. 35,000/-. It is apparent that these facts had weighed upon the appellate



authority while ordering free allowance under Section 79 of the Customs Act, 1962. The Government therefore holds that the Order-in-Appeal allowing the respondent free allowance of Rs. 35,000/- and requantifying duty after allowing such allowance is legal and tenable. Government therefore does not find any infirmity in the order of the appellate authority on this aspect.

10. Government observes that the gold has been recovered from the pockets of the trouser of the respondent. The respondent had not declared the jewellery being carried to the customs authorities and had attempted to clear through the Green Channel. Therefore, the confiscation of the gold is justified. Per se, the import of gold is restricted but not prohibited. Gold is not prohibited for use by the people and release of the same will not cause any harm to society. Likewise its import and/or redemption would not be a danger to society or detrimental to health, welfare or morals of the people as a whole in any circumstances. In the present case, there is no dispute whatsoever about the ownership of the goods. The respondent has claimed ownership of the gold. The gold was not ingeniously concealed in a manner that it would be difficult to detect. The respondent had carried the gold in his trouser pockets. In the circumstances, absolute confiscation of the gold would be a very harsh action.

11. There are a catena of judgments which align with the view that the discretionary powers vested in the lower authorities under Section 125(1) of the Customs Act, 1962 are required to be exercised in such cases. Government therefore concurs with the view of the Commissioner(Appeals) allowing the gold to be redeemed on payment of fine, customs duties as applicable and penalty. However, the redemption fine and penalty should be commensurate with the gravity of the offence committed by the respondent to deter him from indulging in such acts in future. Although the gold had not been concealed ingeniously, the respondent had attempted to import gold, clear them surreptitiously through the Green Channel without declaring them and evade customs duties payable thereon. Therefore, the redemption fine imposed for redeeming the gold cannot be as low as ordered by the appellate authority.



12. Government therefore modifies the Order-in-Appeal No. 90/2013 dated 21.10.2013 by increasing the redemption fine imposed from Rs. 60,000/- (Rupees Sixty Thousand Only) to Rs. 1,00,000/- (Rupees One Lakh Only). The penalty imposed is upheld.

13. The Revision Applications filed by the Department are disposed off in the above terms.

14. So ordered.

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. <sup>1150-1151</sup> /2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.11.2018

To,  
Shri S. Natarajan  
S/o Shri Sigamuthu  
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Copy to:

1. Commissioner of Customs, Trichy, No. 1, Williams Road, Tiruchirapalli 620 001
2. Commissioner of Customs & Central Excise(Appeals), No. 1, Williams Road, Tiruchirapalli 620 001
3. Sr. P.S. to AS(RA), Mumbai
- ~~4.~~ Guard File
5. Spare Copy

