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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. 373/31/B/14-RA | 1184

Date of Issue 03/08/2018

ORDER NO. <sup>555</sup>/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 26.07.2018  
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 Mohamed Athif  
**Respondent** : Commissioner of Customs, Chennai.  
**Subject** : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. C.  
Cus No. 1805/2013 dated 05.12.2013 passed by the  
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Mohamed Athif (herein referred to as Applicant) against the order no 1805/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 05.06.2011. He was intercepted and examination of his person resulted in the recovery of assorted gold bar totally weighing 4850 gms valued at Rs. 90,32,078/- ( Rupees Ninety lakhs Thirty two thousand and Seventy eight). The gold wrapped in cellophane covered packets indigenously concealed in both his elastic knee caps worn around his shins.

3. After due process of the law vide Order-In-Original No. 14/2012-Adj-Air dated 04.05.2012 the Original Adjudicating Authority ordered confiscation of the impugned gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 9,00,000/- (Rupees Nine lakhs) under Section 112 (a) of the Customs Act,1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 1805/2013 dated 05.12.2013 rejected the appeal of the applicant.

4. The Revision Application has been filed interalia on the following grounds that

4.1 The adjudicating authority failed to note that the Applicant was intercepted as he was proceeding towards the Red channel to declare the gold; The statement obtained from the passenger that he did not declare the gold is wrong and obtained with threat and coercion; The retraction of the Applicant was not considered; Gold is not a prohibited item and is importable on applicable duties; Redemption of the gold can be given even for prohibited goods; No investigations have been undertaken to evidence the existence of Shri Maqbool from Dubai; The order in appeal states that the redemption fine is reasonable whereas no redemption fine has been imposed by the order in original and the gold is absolutely confiscated; The section 125 of the Customs Act,1962 clearly states that if the owner is not known goods can be released to the person from whom the gold is recovered on payment of redemption fine.

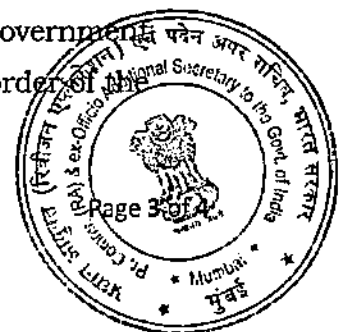


4.2 The Revision Applicant cited case laws in his defense and prayed for setting aside the order in original and release the gold for re-export on redemption fine and penalty and pass such reliefs as deemed fit and thus thereby render justice.

5. A personal hearing in the case was scheduled to be held on 03.07.2018, the Advocate for the respondent Shri T. Chezhiyan attended the hearing, he re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

6. 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 had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified. Government observes that the Applicant had ingeniously concealed gold bar in both of the elastic knee caps worn by him so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962 by ingeniously concealing the same. The release on concessional rate of duty also cannot be entertained as the Applicant has not declared the gold as required under Section 77 of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold pieces without payment of customs duty.

7. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.



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8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No1805/2013 dated 05.12.2013 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

*(Handwritten signature)*  
20.7.18

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

ORDER No. <sup>555</sup>/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 26.07.2018

To,  
Shri Mohamed Athif  
c/o Shri T. Chezhiyan  
Advocate.  
No. 8 Eldams Road,  
Alwarpet,  
Chennai-600 018.

**ATTESTED**

*(Handwritten signature)*

**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

