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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. 380/98/B/16-RA

Date of Issue 14/08/2018

ORDER NO. 618 /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.07.2018 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 : Commissioner of Customs, Chennai.

Respondent : Shri N. Hyder Ali

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 141/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Chennai.



## ORDER

This revision application has been filed by Commissioner of Customs, Chennai. (herein referred to as Applicant) against the Order in Appeal C. Cus No. 141/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Chennai.

3. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 27.01.2016. He was intercepted and examination of his person resulted in the recovery of two gold chains from his pant pocket weighing 147 gms valued at Rs. 3,55,940/- ( Rupees Three Lakhs Fifty five thousand Nine hundred and Forty ). In addition the Applicant also brought 1000 nos black cigarettes valued at Rs. 3,750/- ( Three thousand Seven hundred and Fifty).

4. After due process of the law vide Order-In-Original No. 110/2016 – Batch A dated 27.01.2016 the Original Adjudicating Authority ordered absolute confiscation of the gold and cigarettes under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 36,000/- under Section 112 (a) of the Customs Act, 1962.

5. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 141/2016 dated 29.02.2016 set aside the absolute confiscation of the gold and allowed its redemption on payment of redemption fine of Rs.1,10,000/- and modified the appeal of the applicant.

6. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

6.1 The Both the Order in original and the Order of the Commissioner (Appeals) is neither legal nor proper; the respondent had tried to smuggle the gold by way of non declaration and thus had a culpable mind to smuggle them into India without payment of duty; The gold was kept concealed in his pant pockets; The Respondent ha contravened the section 77 of the Customs Act, 1962 and he did not have foreign currency to therefore the gold is liable for absolute confiscation; The respondent has stayed abroad only for two days and did not have foreign currency



for payment of customs duty and hence ineligible to import gold under Notification No. 12/2012 and Baggage rules and therefore permitting an ineligible passenger to redeem smuggled gold is incorrect in law; The Board has advised the department to prevent the misuse of the facility of bringing gold by eligible passengers hired by unscrupulous elements; the order of the Appellate authority makes smuggling an attractive proposition.

6.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority or such an order as deemed fit.

7. A personal hearing in the case was scheduled to be held on 23.07.2018, the Advocate for the respondent Shri G. Derrick Sam attended the hearing, he pleaded that the Departments appeal has been rendered infructuous in view of Madras High Court orders dated 21.06.2016 in W. P. 20259 of 2016. The writ petition No. 20259 of 2016 was filed by the Respondent, Shri Hyder Ali requesting for directions to the Applicants for implementation of the impugned Order of Commissioner (Appeals). The Hon'ble High Court of Madras granted 30 days time to the Applicants to file a stay application with the Revisional Authority and if they fail to obtain a stay, the Department will release the gold as per the orders of the Commissioner (Appeals).

Government has gone through the facts of the case, the department is aware that there is no specific provision of stay under section 129DD of the Custom's Act, 1962. Government also notes that the Hon'ble High Courts order is very clear in its order with regard to the further course of action in case the stay is not obtained. The Government however is not of the opinion that the department Appeal has been rendered infructuous.

9. The Government has gone through the case records it is observed that the respondent did not cross the green channel and was intercepted before he attempted the same. The ownership of the gold is not disputed. The gold was recovered from his pant pockets and there is no allegation of indigenous concealment. Absolute



merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. Further, 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. Under the circumstances, the Commissioner of Customs (Appeals) has rightly extended the option of redemption of the gold for re-export on payment of redemption fine and penalty. The Government therefore agrees with the Order-in-Appeal that the absolute confiscation of the gold. The Appellate order 141/2016 dated 29.02.2016 passed by the Commissioner of Customs (Appeals), Chennai is therefore upheld as legal and proper.

10. Revision application is accordingly dismissed.

11. So, ordered.

*(Handwritten Signature)*

(ASHOK KUMAR MEHTA)

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

ORDER No. <sup>618</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31-07-2018

To,

1. The Commissioner of Customs,  
Custom House,  
Rajaji Salai,  
Chennai.
2. Shri N. Hyder Ali  
c/o Shri G. Derrick Sam  
17, First Cross Street,  
Fourth Avenue,  
Besant Nagar,  
Chennai - 600 090.

**ATTESTED**

*(Handwritten Signature)*

**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs (Appeals), Chennai
2. Sr. P.S. to AS (RA), Mumbai.
- ~~3. Guard File.~~
4. Spare Copy.

