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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 380/54/B/15-RA / 57

Date of Issue 27/08/2018

ORDER NO. 626/2018-CUS (SZ)/ASRA/MUMBAI DATED 14.08.2018 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 Syed Altaf Ali

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. C. Cus
No. 354/2015 dated 30.06.2015 passed by the
Commissioner of Customs (Appeals-I), Chennai.

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ORDER

This revision application has been filed by The Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order 354/2015- dated 30.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

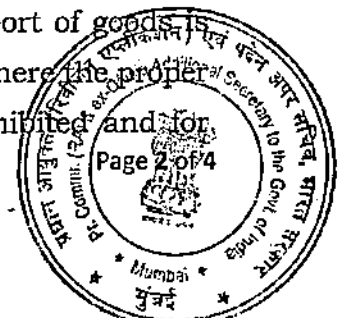
2. Briefly stated facts of the case are that the Officers of Customs intercepted the Shri Syed Altaf Ali, at the Chennai International Airport on 14.02.2015 while passing through the green channel. Examination of his person resulted in recovery of five gold bits totally weighing 599 grams valued at Rs. 16,17,300/- (Rupees Sixteen Lakhs Seventeen thousand Three hundred). The gold bits were recovered from his pant pockets.

3. The Original Adjudicating Authority, vide order No. 06/2015-16-AIU dated 15.04.2015 absolutely confiscated the gold mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 1,50,000/- was imposed under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Respondent filed an appeal with the Commissioner of Customs (Appeals) Chennai, Commissioner of Customs (Appeals) Chennai, vide his order No. 354/2015 dated 30.06.2015, set aside the absolute confiscation and allowed the respondent to redeem the gold on payment of Rs. 4,00,000/- and allowed re-export.

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

5.1. 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 not declaring knowing well he was not eligible to bring gold; The Respondent has contravened the section 77 and 11 of the Customs Act, 1962 and therefore the gold is liable for absolute confiscation; The respondent did not have foreign currency for payment of customs duty and hence ineligible to import gold under Notification No. 12/2012 and Baggage rules; Re-export of goods is covered under section 80 of the Customs Act,1962, where the proper officer may retain goods which are dutiable or prohibited and for



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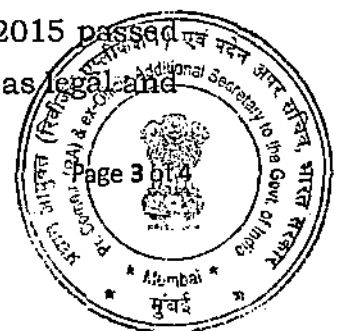
which declaration is made, for re-export. In this case the Respondent has not filed any declaration and hence the order to allow re-export is not in order, especially when the respondent is a carrier and was not the owner of the gold; The Appellate order upholding re-export is also erroneous; Gold is a restricted item and if still attempted to be smuggled it becomes prohibited and therefore should be confiscated absolutely; Board's circular No. 06/2014-Cus dated 06.03.2014 advises to be careful to prevent misuse of facility for bringing gold; the order of the Appellate authority makes smuggling an attractive proposition.

5.2 The Revision Applicant prayed for setting aside the order of the the Appellate authority or such an order as deemed fit.

6. In view of the above, the Respondent 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 held on 31.07.2018. The Respondent reiterated the observations of the Appellate authority and submitted that a lenient view may be taken in the matter and pleaded that the redemption fine and penalty be reduced.

7. 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. There is no allegation of indigenous concealment. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. The import of gold is restricted and not prohibited, Notification No. 12/2012 Gold 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 mandatorily. Under the circumstances, the Appellate authority has rightly extended the option of redemption of the gold for re-export on payment of redemption fine and penalty. The Order-in-Appeal has also rightly upheld the order.

9. In conclusion, the Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 354/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai, is 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. ⁶²⁶/2018-CUS (SZ) /ASRA/MUMBAI

DATED 14.08.2018

To,

1. The Commissioner of Customs,
Custom House,
Rajaji Salai,
Chennai.
2. Shri Syed Altaf Ali
13, 223 Lawyer Fakruddin Street,
Kadapa, 516 001.
Andra Pradesh.

Copy to:

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

ATTESTED

Received original copy of order for
order no 626/2018-CUS(SZ)/ASRA/Mumbai

(Handwritten initials and date)
27/8/18

(Handwritten signature)
~~*(Handwritten signature)*~~

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

Syed Altaf Ali

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