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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
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Mumbai-400 005

*To be checked*

F.No. 371/75/B/14-RA / 1559

Date of Issue 21.09.2018

ORDER NO.672/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 31.08.2018 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 : Shri Abdirizak Farah Ali

Respondent: Commissioner of Customs, Mumbai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-11/2014-15 DATED 28.08.2014 passed by the Commissioner of Customs (Appeals), Mumbai - III.



ORDER

This revision application has been filed by Shri Abdirizak Farah Ali (herein referred to as Applicant) against the Order in Appeal C. Cus No. MUM- CUSTM-PAX-APP 371/75/B/14-15 DATED 28.08.2014 passed by the Commissioner of Customs (Appeals), Mumbai-III.

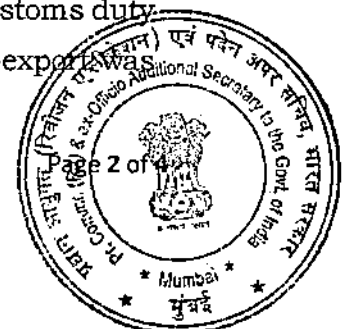
2. Briefly stated the facts of the case are that the applicant, arrived at the CSI Airport on 01.02.2013. He was intercepted and examination of his person resulted in the recovery of assorted gold bars and jewelry totally weighing 4.359 kgms valued at Rs.1,05,15,364/- (Rupees One crore Five lacs Fifteen thousand Three hundred and Sixty Four ). The gold was recovered from an empty metal box of Ballantine Whiskey, wrapped in adhesive tape from the pockets of the overcoat and pockets of the pants worn by him.

3. After due process of the law vide Order-In-Original No. ADC/ML/ADJN/65/2013-14 dated 31.12.2013 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act. But allowed redemption of the gold on payment of Rs. 15,00,000/- and imposed penalty of Rs. 5,00,000/- under Section 112 (a) of the Customs Act,1962. A penalty of Rs. 10,000/- under Section 114AA of the Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved by the said order, the Applicant filed an appeal before the Commissioner (Appeals) seeking re-export and reduction of fine and penalty. The Commissioner (Appeals) vide Order-In-Appeal MUM- CUSTM-PAX-APP- 371/75/B/14-15 dated 28.08.2014 rejected the appeal.

5. The applicant has filed this Revision Application interalia on the following grounds that

5.1 The order of the authorities is against the law and evidence on record; The Applicant requested for re-export as he was a Nederland citizen and thus a foreign national and not a frequent traveler and not aware of Indian law; The gold brought by him was from his own shop in Dubai and is of 18 carats; The Applicant had pleaded that he was unable to pay customs duty of 36.05% and had requested for re-export; The rejection of re-export was



totally unjustified; There are several orders allowing re-export which have not been challenged by the department.

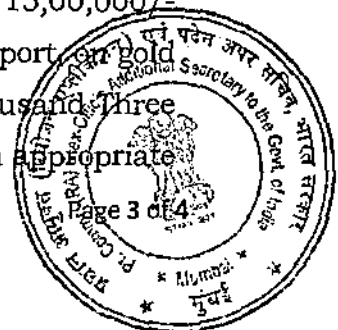
5.2 The Revision Applicant cited cases and case laws in support of his case and requested that the prayed that the Honble Revisionary authority may be pleased to allow the revision application and allow re-export of the gold, and reduce the redemption fine and personal penalty and render justice.

6. A personal hearing in the case was scheduled to be held on 16.08.2018, the the Advocate for the respondent Shri N. J. Heera attended the hearing, she re-iterated the submissions filed in Revision Application and pleaded for re-export of gold and requested for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. A written declaration of goods was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was carried in empty boxes and it was not indigenously concealed. Import of gold is restricted not prohibited. There is no dispute regarding ownership of the gold. The Applicant is not a frequent traveler and there are no previous offences registered against the Applicant. 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 view of the above facts, the Original adjudicating authority has rightly allowed the release of the gold on payment of redemption fine and penalty and the Appellate Authority has rightly upheld the order. The penalty under section 114AA is not liable to be imposed

9. The Applicant has pleaded that he is unable to pay the customs duty of 36.05% and therefore has pleaded that the gold be re-exported on reduced fine and penalty. Government observes that the redemption fine of Rs. 15,00,000/- and penalty of Rs. 5,00,000/- is too low in case redemption for re-export on gold valued at Rs.1,05,15,364/- (Rupees One crore Five lacs Fifteen thousand Three hundred and Sixty Four ) An option may be given for redemption on appropriate



redemption fine and penalty. is reasonable and appropriate and does not merit reduction. The Government also observes that the Applicant is a foreign national and she is not a frequent traveler to India. Under the circumstances the Government is inclined to accept the plea for re-export. The impugned Order in Appeal therefore needs to be modified.

10. The Government, allows re-export of the gold on payment of Rs. 50,00,000/- ( Rupees Fifty lakhs) as redemption fine and a penalty of Rs. 10,00,000/- (Rupees Ten lakhs). The penalty of Rs. 10,000/- imposed under section 114AA of the Customs Act,1962 is set aside.

11. The impugned Order in Appeal of the Commissioner ( Appeals) is modified as detailed above. Revision application is partly allowed on above terms.

12. So, ordered.

*Ashok Kumar Mehta*  
21.5.18

(ASHOK KUMAR MEHTA)

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

ORDER No.672/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31-07-2018

To,

Shri Abdirizak Farah Ali  
C/o Shri N. J. Heera, Advocate  
Ground Floor, 41, Mint Road,  
Opp GPO,  
Fort, Mumbai-1.

Copy to:

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

**ATTESTED**

*S.R. Hirulkar*  
21.9.18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

