

ORDER

This revision application has been filed by Commissioner of Customs, Mumbai, (herein referred to as Applicant) against the Order in Appeal No. 1270/2013 dated 17.09.2013 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case is that the Respondent, a Sri Lankan citizen arrived at the CSI Airport on 29.01.2013. Examination of his baggage and person resulted in the recovery of a gold chain weighing 129 gms valued at Rs. 3,71,262/- (Rupees Three lakhs Seventy one thousand Two hundred and Sixty two).

3. After due process of the law vide Order-In-Original No. 115/ AIU C dated 29.01.2013 the Original Adjudicating Authority ordered absolute confiscation of the gold bars under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 38,000/- under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the respondent and the Applicants both filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal 1270/2013 dated 17.09.2013 allowed the gold for re-export on payment of redemption fine of Rs. 60,000/-, and also reduced the penalty to Rs. 10,000/- and allowed the appeal of the respondent.

5. Aggrieved with the above order the Applicants have filed this revision application inter alia on the grounds that;

5.1 The order of the Commissioner (Appeals) in granting re-export overlooks the fact that the passenger has acted as a carrier and the order awarding re-export has resulted in granting an unintended benefit to a smuggler passenger; In the case law relied upon by the Commissioner (Appeal) the question of acting as a carrier is not considered; Absolute confiscation in such cases is upheld by the high Courts; It is apprehended that the impugned order in Appeal if implemented would jeopardize the interest of the revenue and as the Respondent is a foreign citizen the likelihood of securing the revenue interest as per the order in original would be ~~granted~~



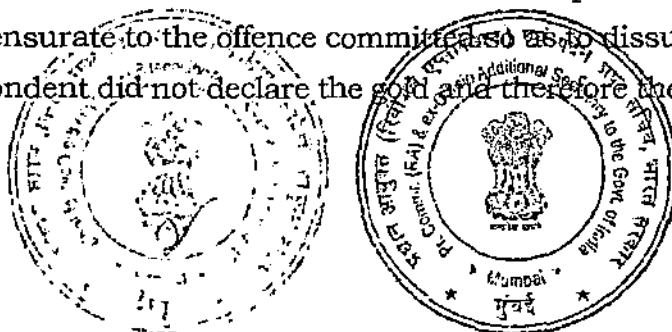
5.2 The Revision Applicant cited decisions in favor of their case and prayed for setting aside the order of the Appellate authority and the order in original be upheld or such an order as deemed fit.

6. In view of the above, the Respondent and his Advocate 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 scheduled held on 17.01.2018, 21.02.2018 and 16.08.2018. However, neither the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided exparte on merits

7. Government has gone through the facts of the case, the respondent had attempted to import the gold without declaration and therefore confiscation of the same is justified and upheld.

8. However, the facts of the case state that the Applicant had not cleared the Green Channel. The gold was recovered from his pant pockets and therefore it was not ingeniously concealed. Import of gold is restricted not prohibited. There is no reference of any previous offence registered against the respondent. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant.

9. 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 in regard to goods that are not strictly prohibited. The Government therefore is inclined to agree with the Order-in-
(A.P) Appeal allowing the gold on redemption fine and penalty. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. Government however notes that the redemption fine and penalties should be commensurate to the offence committed so as to dissuade such acts in future. The Respondent did not declare the gold and therefore the redemption fine



and penalties cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore is liable to be modified.

10. The impugned Order in Appeal is set aside. The Government allows redemption of the gold for re-export, the redemption fine imposed on gold totally weighing 129 gms valued at Rs. 3,71,262/- (Rupees Three lakhs Seventy one thousand Two hundred and Sixty two) is increased from Rs. 60,000/- (Rupees Sixty thousand) to Rs. 1,30,000/- (Rupees One lakh Thirty thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case also justify an increase in the penalty imposed. The penalty imposed on the Applicant is therefore increased from 10,000/- (Rupees Ten thousand) to Rs.26,000/- (Rupees Twenty six thousand) under section 112(a) of the Customs Act,1962.

11. Revision application is partly allowed on above terms.

12. So, ordered.

(Handwritten Signature)
17.11.18

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

ORDER No. 700/2018-CUS (SZ) /ASRA/MUMBAI

DATED 17.09.2018

To,

1. The Principal Commissioner of Customs (Airport),
New Custom House,
Menambakkam Road,
Chennai-27.
2. Shri Susantha Gunasekara
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd Floor,
Chennai 600 001.

ATTESTED

(Handwritten Signature)
12/10/18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai III
2. Sr. P.S. to AS (RA), Mumbai.
3. *General file*

