

REGISTERED

SPEED POST



GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,

Mumbai-400 005

F.No. 380/105/B/16-RA / 2051

Date of Issue 07/11/2018

ORDER NO. 710/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 14.09.2018 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 : Principal Commissioner of Customs (Airport), Chennai

Respondent : Shri G. Prabhakaran

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 145-146/2016 dated 04.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs, Chennai, (herein referred to as Applicant) against the Order in Appeal No. 145-146/2016 dated 04.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

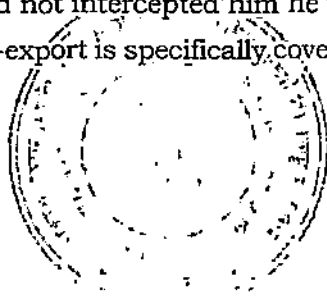
2. Briefly stated the facts of the case is that the Respondent arrived at the CSI Airport on 24.09.2014. Examination of his baggage and person resulted in the recovery of two gold bars and seven bits totally weighing 4363 gms valued at Rs. 1,07,02,640/- (Rupees One Crore Seven lakhs Two thousand Six hundred and Forty). The gold was wrapped in adhesive tapes and recovered from the pockets of the jeans worn by him.

3. After due process of the law vide Order-In-Original No. 279/10.09.2015 the Original Adjudicating Authority ordered confiscation of the gold bars under Section 111 (d) (l) and (m) of the Customs Act, 1962, But allowed the option of redeeming the gold for re-export on payment of Rs. 50,00,000/- under section 125 of the Customs Act, 1962 and imposed penalty of Rs. 10,00,000/- 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 145-146/2016 dated 04.03.2016 reduced the redemption fine to Rs. 15,00,000/-, and also reduced the penalty to Rs. 5,00,000/- and allowed the appeal of the respondent.

5. Aggrieved with the above order the Applicants have 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 as the Applicant had brought the gold by way of deep concealment wrapping them in adhesive tapes; As the passenger did not declare the gold and as he did not possess foreign currency to pay the customs duty and as he did not have any permit for legal import of the gold the same was seized; In his statement given before the Customs authorities he admitted to the above facts; He therefore had a culpable mind to smuggle and circumvent the restrictions on the import of gold; It is an admitted fact that the passenger failed to make a declaration as required under section 77 of the Customs Act, 1962, thus rendering the goods as prohibited goods; The adjudication authority has clearly stated that the Respondent is ineligible to import gold as he has visited India seven times during the last six months and therefore he does not fulfill the conditions as required under Notification no. 12/2012 dated 17.03.2012; If the Customs officers had not intercepted him he would have cleared the gold without payment of duty; Re-export is specifically covered under section 80 of the Customs Act and re-export



is permissible only if a true declaration is made under section 77 of the Customs Act, 1962;

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 ex parte on merits

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

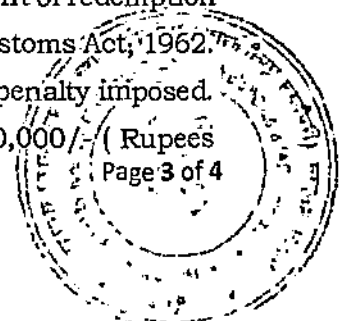
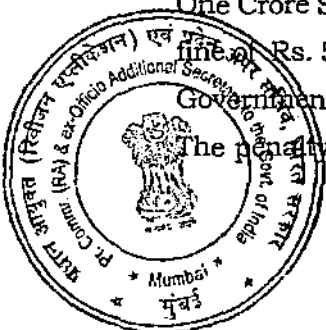
8. However, the facts of the case state that the Applicant had not cleared the Green Channel. The gold was recovered from his pant pockets and therefore it was not ingeniously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. There is no reference of any previous offence registered against the respondents. The Appellate order makes a reference of the respondent wife who is an eligible passenger to bring 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 in regard to goods that are not prohibited. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. 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 had concealed the gold in his pant pockets and though it was not concealed ingeniously, he did not declare it and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore needs to be modified.

The impugned Order in Appeal is set aside. The Government allows redemption of the gold for re-export, totally weighing 4363 gms valued at Rs. 1,07,02,640/- (Rupees One Crore Seven lakhs Two thousand Six hundred and Forty) on payment of redemption

fine of Rs. 50,00,000/- (Rupees Fifty Lakh) under section 125 of the Customs Act, 1962.

Government observes that the facts of the case justify reduction in the penalty imposed.

The penalty imposed on the Applicant is therefore increased from 10,00,000/- (Rupees



Ten lakhs) to Rs. 11,00,000/- (Rupees Eleven Lakhs) under section 112(a) of the Customs Act,1962.

10. Revision application is partly allowed on above terms.

11. So, ordered.

(Handwritten Signature)
14.9.18

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

ORDER No. 710/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 14.09.2018

To,

1. The Principal Commissioner of Customs (Airport),
New Custom House,
Menambakkam Road,
Chennai-27.
2. Shri G. Prabhakaran
No. 11, Mylapooran Street, Royapettah,
Chennai - 600 014.

Copy to:

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

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

