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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. 380/106/B/13-RA / 20<sup>54</sup>

Date of Issue 27/11/2018

ORDER NO. 712/2018-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 Mohamed Elais alias Mohamed Abubacker

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
1496/2013 dated 23.10.2013 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. 1496/2013 dated 23.10.2013 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case is that the Respondent applicant arrived at the CSI Airport on 12.05.2013. Examination of his baggage and person resulted in the recovery of 13 gold chains bars and gold baby bangles totally weighing 155 gms valued at Rs. 4,04,055/- ( Rupees Four lakhs Four thousand and Fifty five ). 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. 572/ Batch C dated 12.05.2013 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 41,000/- under Section 112 (a) of the Customs Act, 1962.

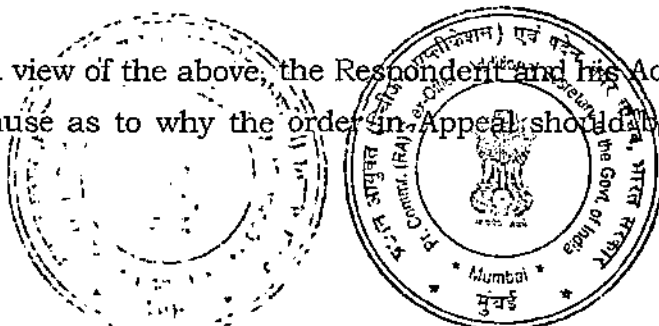
4. Aggrieved by the said order, the Respondent filed an appeal before the Commissioner (Appeals) who vide Order-In-Appeal 1496/2013 dated 23.10.2013 allowed redemption of the gold, for re-export on payment of redemption fine of Rs. 80,000/- and also reduced the penalty to Rs. 20,000/- and allowed the appeal of the applicant.

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

5.1 The Commissioner (Appeals) has granted re-export inspite of the passenger acting as a carrier, resulting in an unintended benefit to the respondent; Absolute confiscation has been upheld in numerous cases even by the Supreme court; The impugned order if implemented would jeopardise the interest of revenue irreparably.

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 restore the order in original or any 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



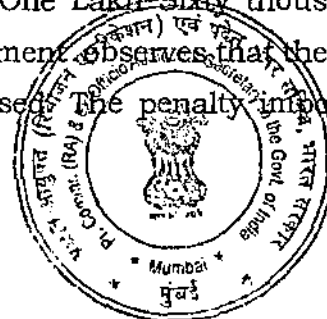
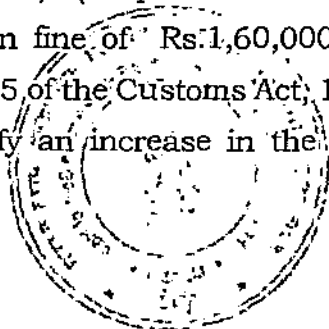
deemed fit, and accordingly a personal hearing in the case was scheduled held on 14.06.2018, 10.07.2018 and 16.08.2018. However, neither the Respondent nor his advocate replied to the Show Cause Notice or attended the said hearing. The case is therefore being decided exparte on merits

7. Government has gone through the facts of the case, the respondent did not declare the gold as required under section 77 of the Customs Act, 1962 and therefore confiscation of the same is justified and upheld.

8. However, the facts of the case do not allege that the Respondent had concealed the gold, and therefore it can be safely concluded that the gold was not ingeniously concealed. Import of gold is restricted not prohibited. There is no reference of any previous offence registered against the respondents. 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 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 did not declare the gold and therefore the redemption fine and penalties should be commensurate with the offence committed. The impugned Order in Appeal therefore needs to be modified.

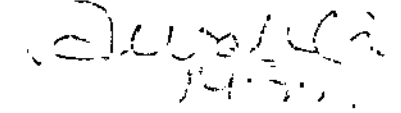
YUCERAHIA UNQOJ R  
(A.R) 10:01:01 The impugned Order in Appeal is set aside. The Government allows redemption of the gold for re-export. The gold totally weighing 155 gms valued at Rs. 4,04,055/- ( Rupees Four lakhs Four thousand and Fifty five ) on payment of redemption fine of Rs.1,60,000/- ( Rupees One Lakh Sixty thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify an increase in the penalty imposed. The penalty imposed on the



Applicant is therefore increased from Rs. 20,000/- ( Rupees Twenty thousand ) to Rs.32,000/- ( Rupees Thirty two thousand ) under section 112(a) of the Customs Act,1962.

11. Revision application is partly allowed on above terms.

12. So, ordered.



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

ORDER No. 712/2018-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 Mohamed Elais alias Mohamed Abubacker  
No. 16 Nadu street,  
Kodikalpalayam,  
Tiruvarur District.

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.)

