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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. 380/53/B/15-RA

2603

Date of Issue

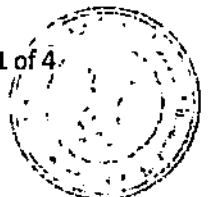
26.11.2018

ORDER NO. <sup>762</sup> /2018-CUS (S Z) / ASRA / MUMBAI/ DATED 28.09.2018 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 : Commissioner of Customs (Airport) Chennai.

Respondent : Shri Shihabuddeen Mannambath

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 352 & 353/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs (Airport) Chennai, (herein referred to as Applicant) against the Order in Appeal C. Cus No. 352 & 353/2015 dated 30.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. On 21.05.2014 the respondent arrived at the Chennai Airport. Examination of his baggage resulted in the recovery of gold jewelry weighing 410 gms valued at Rs. 8,13,844/- ( Rupees Eight lakhs Thirteen thousand Eight hundred and forty four). The gold bars were recovered from the undergarments worn by the Respondent.

3. After due process of the law vide Order-In-Original No. 62/28.01.2015 the Original Adjudicating Authority ordered confiscation of the goods under Section 111 (d) (l) and (m) of the Customs Act, 1962, but allowed redemption of the gold for re-export on payment of Rs. 2,50,000/- and imposed penalty of Rs. 75,000/- under Section 112 (a) of the Customs Act,1962 on the Respondent.

4. Aggrieved by the said order, the respondent filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus No. 352 & 353/2015 dated 30.06.2015 reduced the redemption fine to Rs. 1,50,000/- but made no changes in the penalty imposed 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 of the original adjudicating authority and the order in Appeal is are neither legal nor proper as the respondent had concealed the gold by way of deep concealment and had attempted to pass through the green channel without payment of duty knowing well that she was not eligible for bringing gold; The re-export ordered by the Commissioner (Appeals) is also not in order as the Passenger had not declared the gold as required under section 77 of the Customs Act,1962; In her statement the respondent had stated that she has acted as a carrier and she was



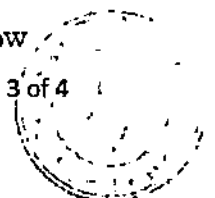
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not the owner of the gold; The retraction made by her was clearly an after thought and there was no evidence that the statement was given under threat or coercion; Section 80 of the Customs, Act, 1962 allows re-export only when a true declaration is made by the passenger in this case the respondent has not filed any declaration; The respondent was not an eligible passenger and had a culpable mind to smuggle the gold into India; The Adjudicating authority and Appellate authority wrongly allowing clearance of the gold is not acceptable as the passenger had intentionally not declared the gold;

5.2 The Revision Applicants cited case laws in support of their case and prayed that the order of the Adjudicating authority and Appellate authority be set aside 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 24.07.2018, 20.08.2018 and 10.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided ex parte on merits.

**OBSCURITY**  
7. The Government has gone through the case records it is observed that the gold bars were concealed by the respondent in his underwear and it was not declared by the Respondent and therefore, confiscation of the gold is justified. However the gold was not indigenously concealed. Import of gold is restricted not prohibited and the ownership of the gold is not disputed. Absolute confiscation in such a case is very harsh and unjustified. There are no instances of any previous offences on behalf of the respondent. 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. The Government therefore is inclined to agree with the Original Adjudicating Authority and 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 brought the gold and though it was not concealed ingeniously, he did not declare it as required under section 77 of the Customs Act, 1962 and therefore the redemption fine cannot be as low



as ordered in the order in Appeal. Government is of the opinion that the impugned Order in Appeal is therefore liable to be modified.

8. The impugned Order in Appeal is modified as below. The Government allows redemption of the gold, weighing 410 gms valued at Rs. 8,13,844/- ( Rupees Eight lakhs Thirteen thousand Eight hundred and forty four). The redemption fine imposed is increased from Rs. 1,50,000/-/- ( Rupees One lakh Fifty thousand ) to Rs.4,00,000/- ( Rupees Four lakhs ) under section 125 of the Customs Act, 1962. The penalty imposed on the Respondent is also increased from Rs. 75,000/- ( Rupees Seventy five thousand ) to Rs. 80,000/- ( Rupees Eighty thousand) under section 112(a) of the Customs Act,1962.

9. Revision application is partly allowed on above terms.

10. So, ordered.

*Ashok Kumar Mehta*  
28/9/18

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

ORDER No. 762/2018-CUS (SZ) /ASRA/MUMBAI

DATED 28.09.2018

**ATTESTED**

To,

1. The Commissioner of Customs, ( Airport) Chennai,  
New Custom House,  
Chennai-600 001.
2. Shri Shihabuddeen Mannambath  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High Court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

*S. R. Hirulkar*  
26.11.18

एस. आर. हिरुलकर  
S. R. HIRULKAR

Copy to:

3. The Commissioner of Customs (Appeals-I), Chennai.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.

