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SPEED POST

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. 380/04/B/15-RA | १०१९

Date of Issue २०.११.२०१०

ORDER NO. 772/2018-CUS (WZ) / 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 : Principal Commissioner of Customs (Airport), Chennai.

Respondent : Shri Mohamed Yahiya

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus-I No. 95/2014 dated 20.11.2014 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 95/2014 dated 20.11.2014 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. On 01.09.2014 the respondent arrived at the Chennai Airport from Singapore. Examination of his baggage resulted in the recovery of two pieces of gold bits weighing 116 gms and one gold coin of 8 gms totally valued at Rs. 3,18,990/- ( Rupees Three lakhs Eighteen thousand Nine hundred and Ninety) and Whey protein powder valued at Rs. 24,000/-.

3. After due process of the law vide Order-In-Original No. 1084/2014 Batch C dated 01.09.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold and Whey protein powder under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 35,000/- 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 95/2014 dated 20.11.2014 set aside the absolute confiscation of the gold and allowed its redemption on payment of redemption fine of Rs. 90,000/-, reduced the penalty to Rs. 30,000/- and allowed the Whey protein for home consumption subject to production of necessary certificates from the appropriate authority to the satisfaction of the Lower adjudication authority and allowed the appeal of the respondent.

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

5.1 The Order of the Commissioner (Appeals) is not acceptable for the following reasons; only two types of passengers are eligible to bring back gold, passengers who have stayed abroad for more than one year, and passengers who have stayed for more than 6 months; Except these two types of passengers, gold is prohibited to be brought by others; A mere stay of 715 days cannot make the passenger an eligible passenger to bring gold as other conditions like paying duty in foreign currency are also required to be fulfilled; In the instant case the respondent inspite of carrying dutiable goods and failed to make a true declaration as required under section 77 of the Customs Act, 1962; The circumstances of the case and the intention of the respondent in intentionally not declaring the gold was not at all considered by the Appellate authority while allowing him to redeem the goods; The Order of the Appellate authority has the effect of making smuggling an attractive



proposition, since even when caught by the Customs passengers retains the benefit of redeeming the offending goods which works against deterrence.

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.

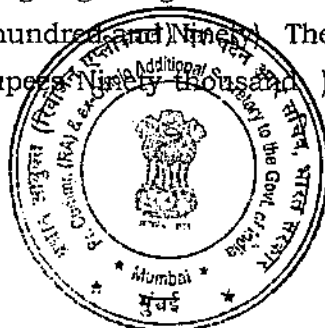
6. In view of the above, the Respondent and his Advocate was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was scheduled on 19.07.2018, 20.08.2018 and 10.09.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits.

7. The Government has gone through the case records it is observed that the gold was not declared as required under section 77 of the Customs Act, 1962 and therefore confiscation of the goods is justified.

8. However, the facts of the case state that the Applicant has not been involved in such offences earlier. The Appellate order states that the respondent has a stay of 715 days abroad making him an eligible passenger. The gold was not indigenously concealed. Absolute confiscation is therefore a harsh option, and unjustifiable. 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 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.

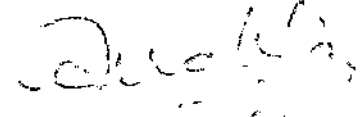
**S.R. HIRLIKAR**  
Assistant Commissioner (R.A.)

9. The impugned Order in Appeal is modified as below. The Government allows redemption of the gold, weighing 124 gms valued at Rs. 3,18,990/- ( Rupees Three lakhs Eighteen thousand Nine hundred and Ninety). The redemption fine imposed is increased from Rs. 90,000/-/- ( Rupees Ninety thousand ) to Rs.1,25,000/- ( Rupees One lakh



Twenty five thousand) under section 125 of the Customs Act, 1962. The penalty imposed on the Respondent is sufficient to meet the ends of justice and is left unchanged.

10. Revision application is partly allowed on above terms.
11. So, ordered.



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

ORDER No. 772/2018-CUS (WZ) /ASRA/mumbai

DATED 28.09.2018

To,

1. The Commissioner of Customs (Airport), Chennai  
Anna International Airport,  
Chennai.
2. Shri Mohamed Yahiya  
S/o Haja Mydeen  
7 Mela Thirupura  
Keelpakkam,  
Adirampattinam-614 701,  
Thanjavur.

Copy to:

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

**ATTESTED**



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

