

REGISTERED  
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. 380/60/B/15-RA

Date of Issue

28.11.2018

ORDER NO. <sup>785</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 Sadik Basha

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal C. Cus  
No. 341/2015 dated 29.06.2015 passed by the  
Commissioner of Customs (Appeals), 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. 341/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals), Chennai.

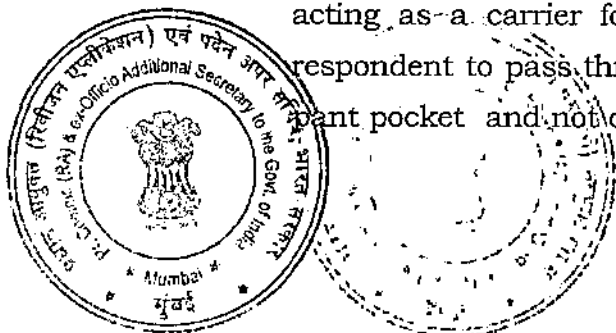
2. On 23.09.2014 the respondent arrived at the Chennai Airport. Examination of his baggage resulted in the recovery of three gold bars weighing 349.5 gms valued at Rs. 9,36,311/- ( Rupees Nine lakhs Thirty six thousand Three hundred and Eleven ). The gold bars were recovered from his pant pocket.

3. After due process of the law vide Order-In-Original No. 1202/2014 AIR dated 10.03.2015 the Original Adjudicating Authority ordered absolute confiscation of the goods under Section 111 (d) (i) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 90,000/- 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. 341/2015 dated 29.06.2015 allowed the gold on payment of redemption fine of Rs. 3,00,000/- 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 The Order of the Commissioner (Appeals) is neither legal nor proper; The respondent has contravened the section 77 and 11 of the Customs Act, 1962, The Appellate authority without considering the same has allowed redemption of the gold; Eligibility to import gold is covered under notification No. 12/2012 -Cus dated 17.03.2012; The passenger does not fulfill all the conditions for concessional rate of duty; The granting concession of re-export is not correct as the passenger was acting as a carrier for monetary consideration; The attempt of the respondent to pass through the green channel, keeping the gold in his pant pocket and not declaring orally all goes to say that the appellants

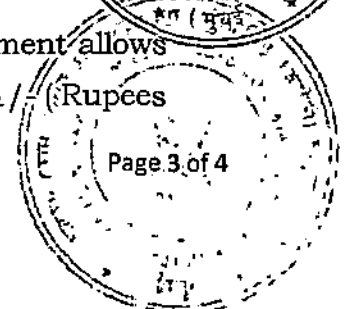


intention to smuggle the gold into the country cannot be disputed; The Revision Applicants cited case laws in support of their case and prayed that the order of the Appellate authority be set aside and the order of the Lower adjudication authority be upheld for such an order as deemed fit.

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 25.07.2018, 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 bars were recovered from the respondents pant pockets and it was not declared by the Respondent and therefore the confiscation of the gold is justified. As the gold was not indigenously concealed. Import of gold is restricted not prohibited and the ownership of the gold is not disputed. The absolute confiscation in such cases appears to be a harsh option and not justified. 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 section 125 of the Customs Act, 1962 does not differentiate between an owner and a carrier. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty. The Appellate authority has also rightly noted that contrary to the contentions of the Applicants the respondent has marked yes in the column of the declaration, asserting that he did bring the gold. 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 chain and though it was not concealed ingeniously, he did not declare it 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 set aside.

8. The impugned Order in Appeal is set aside. The Government allows redemption of the gold, weighing 349.5 gms valued at Rs. 9,36,311/- (Rupees



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Nine lakhs Thirty six thousand Three hundred and Eleven) for re-export. The redemption fine imposed is increased from Rs. 3,00,000/- ( Rupees Three lakhs ) to Rs. 3,50,000/- ( Rupees Three lakhs Fifty thousand ) under section 125 of the Customs Act, 1962. The penalty of Rs. 90,000/- ( Rupees Ninety thousand) imposed on the Respondent under section 112(a) of the Customs Act,1962 is appropriate.

9. Revision application is partly allowed on above terms.

10. So, ordered.



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

ORDER No. 785/2018-CUS (S Z) /ASRA/MUMBAI

DATED 28-09-2018

To,

1. The Commissioner of Customs, ( Airport) Chennai,  
New Custom House,  
Chennai-600 001.
2. Shri Sadik Basha  
10/137, Jaibeem Nagar,  
Perambur,  
Chennai - 600 011.

Copy to:

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

**ATTESTED**

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

