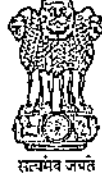


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F. No. 380/111/B/16-RA

12254

Date of Issue

03.12.2018

ORDER NO. 969/2018-CUS (SZ) / ASRA / MUMBAI DATED
28.11.2018 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 : The Commissioner of Customs, Chennai-I.

Respondent : Shri Muhammad Nasick.

Subject : Revision Application filed, under Section 129DD
of the Customs Act, 1962 against the Order-
in-Appeal No. C.Cus-I-No. 13/2016 dated
29.01.2016 passed by the Commissioner of
Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Commissioner of Customs, Chennai-I (herein referred to as Applicant) against the Order in Appeal No. C.Cus-I-No. 13/2016 dated 29.01.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Shri Muhammad Nasick (herein referred to as "the respondent") was intercepted by the Customs Officers at Anna International Airport, Chennai on his arrival by Air India Flight No. AI-906 from Dubai on 12.04.2015. During the personal search of the respondent, the Customs Officers recovered three gold bars from his pockets. The three gold bars were found embossed as 'AL ETIHAD DUBAI-UAE 10 TOLA, 999.0' on each. These all three gold bars were totally weighing 349.50 gms and was appraised at Rs. 9,45,747/- (Rupees Nine Lakh Forty Five Thousand Seven Hundred Forty Seven Only). The Customs officers seized the impugned gold bars under the reasonable belief that the same were smuggled into India and hence liable to confiscation under the provisions of the Customs Act. The respondent stated that he was working as Junior Engineer in Dubai for past three years and earned 5700 UAE Dirham per month from the job. He stated that the gold was purchased by him out of his own salary savings at Dubai and in order to evade duty on gold he had brought it concealed in his pockets.

3. After due process of the law vide Order-In-Original No. 282/2015-16-AIRPORT dated 11.09.2015 the Original Adjudicating Authority ordered confiscation of three gold bars weighing 349.5 gms valued at Rs. 9,45,747/- under Section 111 (d) and (l) and allowed re-export on payment of fine of Rs. 4,50,000/- under Section 125 of the Customs Act, 1962. The adjudicating authority also imposed a penalty of Rs. 90,000/- under Section 112 (a) of the Customs Act, 1962 on the Respondent.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals-I), Chennai who vide Order-In-Appeal No. C.Cus-I-No. 13/2016 dated 29.01.2016 upheld the order in original.



5. Aggrieved with the above order the applicant has filed this revision application on the following grounds :

5.1 the respondent had attempted to smuggle the gold by way of concealment and by way of non declaration.

5.2 the respondent was ineligible to import gold.

The department pleaded that the order in appeal may be set aside.

6. A personal hearing in the case was held on 27.08.2018, 17.09.2018 and 26.09.2018. However, no representative from the applicant's side appear on any of the occasion so offered.

7. The Government has gone through the case records and it is seen that the respondent arrived at the Anna International Airport, Chennai on 12.04.2015 and was intercepted by the Customs Officers. The personal search of the respondent resulted in the recovery of three gold bars totally weighing 349.5 gms valued at Rs. 9,45,747/- kept concealed in the pockets of the pants worn by him, hence confiscation of gold is justified.

8. However, the Government notes that the gold was recovered from his pant pockets and the respondent has not concealed the gold ingeniously. Import of gold is restricted and not prohibited. The ownership of gold is not disputed. There are no instances of any previous offences recorded against the Respondents.

9. 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 view of the same, the Government is of the opinion that the absolute confiscation of the gold is harsh and unjustified and therefore lenient view can be taken in the instant case. The Government, therefore, is inclined to agree with Order in Appeal in allowing the gold on redemption fine and penalty. Government also finds that the redemption fine and penalties imposed are sufficient enough to dissuade such acts in future.




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10. The Government therefore finds no reason to interfere with the Order-in-Appeal. The impugned Order in Appeal No. C.Cus-I-No. 13/2016 dated 29.01.2016 of Commissioner of Customs (Appeals-I), Chennai is upheld as legal and proper.

11. The Revision Application is accordingly dismissed.

12. So, ordered.


28/11/18
(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. 969/2018-CUS (SZ) /ASRA/MUMBAI DATED 28.11.2018

To,

1. The Commissioner of Customs,
Chennai -I Commissionerate,
New Custom House,
Meenambakkam, Chennai- 600 027.
2. Shri Muhammad Nasick,
35, Syed Palli, 3rd Lane,
Nagore- 611 002.

ATTESTED


3.12.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai,
Customs House, Chennai- 600 001..
2. Sr. P.S. to AS (RA), Mumbai.
- ✓ 3. Guard File.
4. Spare Copy.

