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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)  
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F.No. 380/27A-27L/B/16-RA

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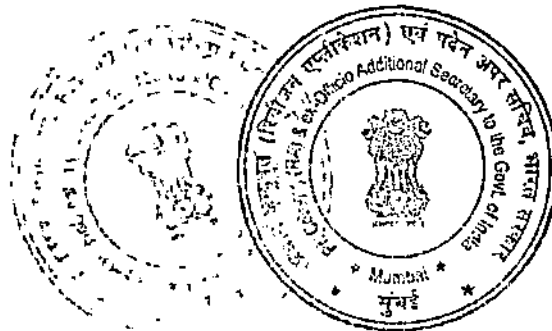
Date of Issue 05/12/2018

978-989  
ORDER NO. /2018-CUS (S Z) / ASRA / MUMBAI/ DATED 27.11.2018 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 : Commissioner of Customs (Airport) Trichy.

Respondent : Shri C. Narayanan Shri. C. Balamurugan  
Shri. S. Vinoth Kumar Ms. G. Priya  
Shri. J. Jaya Pravin Ms. N. Easwari  
Shri. R. Rathaiya Shri. H. Srikumar  
Shri. C. Vijayalachumy Shri C. Vigneswaran  
Shri. J. Jaya Pradip Smt. T. Mageswari

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. 35-  
46/2015 TRY (CUS) dated 24.11.2015 passed by  
the Commissioner of Customs (Appeals-II), Trichy.



ORDER

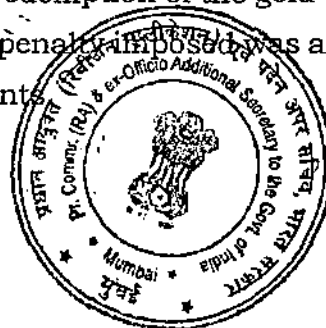
This revision application has been filed by Commissioner of Customs Trichy , (herein referred to as Applicant) against the Order in Appeal No. 35 - 46/2015 TRY (CUS) dated 24.11.2015 passed by the Commissioner of Customs (Appeals-II), Trichy.

2. On 29.04.2015 the 12 international passengers who arrived from Kuala Lumpur were intercepted at the Trichy Airport and one gold chain with dollar as detailed below was recovered from each of them.

Sl. No.	Name of the Pax S/Shri	Desc. Of Gold	Weight ( In Grams)	Value (Rs.)	O-in-O No all dated 29.04.2015
1	C. Narayanan	Chain	130.0	3,17,520/-	196/2015
2	C. Balamurugan	Chain	130.0	3,17,520/-	198/2015
3	S. Vinoth Kumar	Chain	130.4	3,18,497/-	199/2015
4	Ms. G. Priya	Chain	130.6	3,18,985/-	200/2015
5	J. Jaya Pravin	Chain	130.6	3,18,985/-	201/2015
6	Ms. N. Easwari	Chain	130.6	3,18,985/-	202/2015
7	R. Rathaiya	Chain	130.8	3,19,474/-	203/2015
8	H. Srikumar	Chain	130.6	3,18,985/-	204/2015
9	C. Vijayalachumy	Chain	130.6	3,18,985/-	205/2015
10	C. Vigneswaran	Chain	130.6	3,18,985/-	206/2015
11	J. Jaya Pradip	Chain	130.6	3,18,985/-	207/2015
12	Smt. T. Mageswari	Chain	130.2	3,18,008/-	208/2015

After due process of the law vide Order-In-Original No. 196,198,199,200 to 208/2015 all dated 29.04.2015 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. 32,000/- under Section 112 (a) of the Customs Act, 1962 on each of the Respondents.

3. Aggrieved by the said order, the respondent filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. 35 - 46/2015 TRY (CUS) dated 24.11.2015 allowed redemption of the gold on payment of Rs. 75,000/- as redemption fine. The penalty imposed was also reduced to Rs. 30,000/- on each of the respondents.

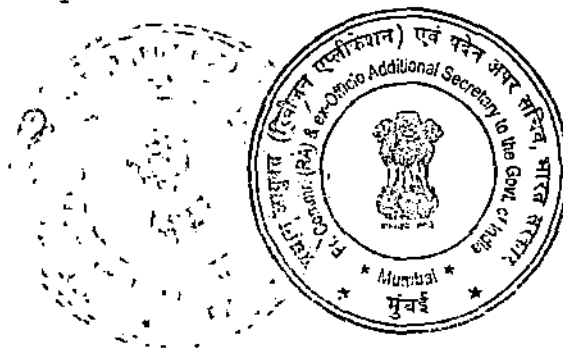


4. Aggrieved with the above order the Applicant, department have filed this revision application interalia on the grounds that;

4.1 The Order in Appeal is not legal and proper on the following grounds; The Commissioner(Appeals ) has not considered that all the 12 persons were foreign nationals and not eligible to import gold; Even if the respondents were carrying the gold for their personal use they should have declared the gold as required under section 77 of the Customs Act, 1962; They obviously chose not to declare the gold and this fact has not been considered by the Appellate order; It is also on record that the Respondents had carried the gold for some other persons and they were not the owners of the gold; Gold is a notified commodity under section 123 of the Custom Act, 1962 and the onus to prove that the gold is not smuggled lies with the person from whom the gold has been recovered, the respondent has not discharged the responsibility cast on the respondents and therefore the decision of the adjudicating authority not to release the gold was legal and proper; If such gold was allowed to be redeemed for re-export, it would set a bad precedent in law and encourage smuggling; There is no legal scheme that allows foreign citizens to import gold into India.

4.2 In view of the above the decision of the Original adjudicating authority not to release the gold was legal and proper. Commissioner (Appeals) has erred in allowing the gold for re-export is not legal and proper.

5. 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 hearings in the case was scheduled on 27.08.2018, 09.10.2018 and 16.10.2018. However, neither the Respondent nor his advocate attended the said hearing. The case is therefore being decided exparte on merits.



6. The Government has gone through the case records it is observed that there is no allegation that the gold was indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. 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, more so because they are all foreign citizens.

7. 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 above facts, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold for re-export 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. 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 gold though not concealed ingeniously, it was required to be declared as per section 77 of the Customs, Act, 1962 and therefore the redemption fine and penalties cannot be as low as ordered in the order in Appeal. The impugned Order in Appeal therefore needs to be modified.

8. The Government allows redemption of the goods for re-export. The redemption fine of Rs. 75,000/- (Rupees Seventy Five thousand) imposed on each passenger is increased to Rs. 1,00,000/- (Rupees One lakh) on each passenger under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty of Rs. 30,000/- (Rupees



Thirty thousand) imposed on the Respondent under section 112(a) of the Customs Act,1962. The same is upheld.

9. Revision application is partly allowed on above terms.

10. So, ordered.

*(Signature)*  
27.11.18

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

978-989  
ORDER No. /2018-CUS (SZ) /ASRA/MUMBAI DATED 27.11.2018

To,

1. Commissioner of Customs,(Airport) Trichy,  
Williams Road, Cantonment, Trichy.
2. Shri C. Narayanan
3. Shri. C. Balamurugan
4. Shri. S. Vinoth Kumar
5. Ms. G. Priya
6. Shri. J. Jaya Pravin
7. Ms. N. Easwari
8. Shri. R. Rathaiya
9. Shri. H. Srikumar
10. Shri. C. Vijayalachumy
11. Shri C. Vigneswaran
12. Shri. J. Jaya Pradip
13. Smt. T. Mageswari

Copy to:

14. The Commissioner of Customs (Appeals-II), Trichy.
15. Sr. P.S. to AS (RA), Mumbai.
16. Guard File.
17. Spare Copy.

