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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. 380/70/B/16-RA

Date of Issue 05/12/2018

ORDER NO. 911/2018-CUS (S Z) / 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 : Commissioner of Customs (Airport) Trichy.**

Respondent : Shri M. Senthilkumar

**Subject** : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 50/2015 TRY (CUS) dated 16.12.2015 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. 50/2015 TRY (CUS) dated 16.12.2015 passed by the Commissioner of Customs (Appeals-II), Trichy.

2. On 17.06.2015 the respondent was intercepted at the Trichy Airport and two gold chain weighing 199.8 grams valued at Rs. 4,98,077/- (Rupees Four lakhs Ninety Eight thousand and Seventy seven) was recovered from him. After due process of the law vide Order-In-Original No. 267/2015 dated 17.06.2015 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. 74,800/- under Section 112 (a) of the Customs Act, 1962 on the Respondent.

3. Aggrieved by the said order, the respondent filed appeals before the Commissioner (Appeals) who vide Order-In-Appeal No. 50/2015 TRY (CUS) dated 16.12.2015 allowed redemption of the gold on payment of Rs. 1,50,000/- as redemption fine. The penalty imposed was reduced to Rs. 50,000/- and on payment of Customs duty.

4. Aggrieved with the above order the Applicants have filed this revision application along with an application for condonation of delay of 16 days, interalia on the grounds that;

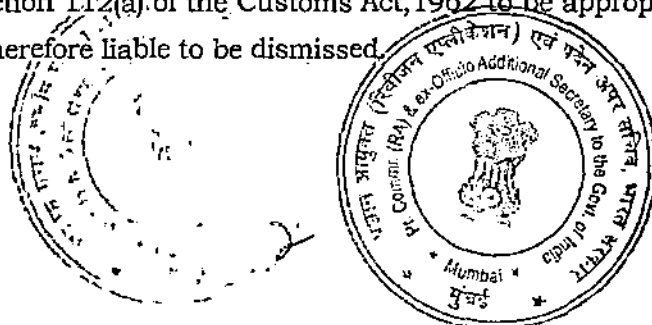
4.1 The Order in Appeal is not legal and proper on the following grounds; The respondent is a frequent visitor and had brought gold ornaments worth Rs. 4,98,077/- clearly beyond his sources of income; Mere declaration on the part of the passenger does not in itself entitle him to import gold; He could not prove to the adjudicating Authority that the gold belonged to him; The gold therefore cannot be treated as bonafide baggage; The passenger carried the gold on behalf of another person on commission basis; If the conditions for the import of gold are not complied with it has to be treated as prohibited goods; The order in Appeal and the Order in original findings have established that the purchase of the gold abroad is not properly established and therefore the funding has been established through black money, further the Respondent had a stay abroad for only three days; that the respondent is an eligible passenger for concessional rate of duty, having stayed abroad for more than 6 months is incorrect; 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 him and therefore the decision of the adjudicating authority not to release the gold was legal and proper; Therefore the Commissioner (Appeals) has erred in not considering the plea of the department considering the facts and circumstances of the case.

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 hearing 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 *ex parte* on merits.

6. The Government has gone through the case records, the delay in filing the revision application is condoned and the Application is taken up on the merits of the case, it is observed that the gold was not indigenously concealed. In fact the facts of the case and the Order in Appeal state that the Respondent had declared the gold as required under section 77 of the Customs, Act, 1962. The case of the Appellants is that the Respondent has not been able to prove legal purchase of the gold, that the respondent had resided abroad for only three days and that he did not have the foreign currency to pay custom duty. However, import of gold is restricted not prohibited and the ownership of the gold is not disputed. There is no allegation that the Respondent has any past history of such misdemeanors inspite of being a frequent flier. The Order in Appeal also mentions that vide Order in Original No. 297/2015-16 dated 08.07.2015 gold brought by other passengers, having stayed abroad for three days was allowed redemption. Further, 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 a very harsh option and cannot be justified and therefore prompts the Government to take a lenient view in the matter. The Government therefore is inclined to agree with the Order-in-Appeal in allowing the gold on redemption fine and penalty and on payment of Customs duty. Government also observes that the redemption fine and penalty of Rs. 1,50,000/- ( Rupees One lakh Fifty thousand) imposed under section 125 of the Customs Act, 1962 and the penalty of Rs. 50,000/- ( Rupees Fifty thousand) imposed on the Respondent under section 112(a) of the Customs Act, 1962 to be appropriate. The Revision Application is therefore liable to be dismissed.



8. Revision application is accordingly dismissed.

9. So, ordered.

*(Signature)*  
28.11.18

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

ORDER No. <sup>991</sup>/2018-CUS (S Z) /ASRA/MUMBAI

DATED 28.11.2018

To,

1. Commissioner of Customs, (Airport) Trichy,  
Williams Road, Cantonment, Trichy.
2. Shri M. Senthilkumar  
Charles Nagar, 2<sup>nd</sup> Street,  
Pudukottai,  
TamilNadu – 622 001.

Copy to:

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

**ATTESTED**

*(Signature)*

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

