

REGISTERED
SPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,

Mumbai-400 005

F. No. 373/51/B/17-RA | 23³⁵

Date of Issue 11/12/2018

ORDER NO. 100⁹/2018-CUS (SZ) / ASRA / MUMBAI DATED 30.11.2018 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 : Shri P. Ganesan.

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 07/2017-TRY (CUS) dated 10.01.2017 passed by the Commissioner of Customs (Appeals), Trichy.



ORDER

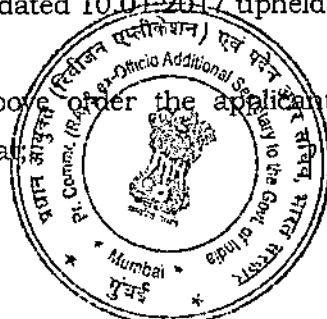
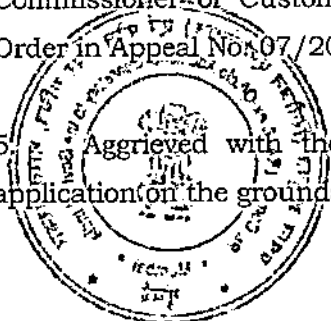
This revision application has been filed by Shri P. Ganesan (herein referred to as 'the Applicant') against the Order in Appeal No 07/2017-TRY (CUS) dated 10.01.2017 passed by the Commissioner of Customs (Appeals), Trichy Commissionerate.

2. The passenger, Shri P. Gaensan was intercepted by the officers of Air Intelligence Unit at the Trichy Airport on his arrival by the Tiger Air Flight No. TR 2664 from Singapore on 16.10.2015. The applicant had not declared any value in Customs Declaration Form. On enquiry as to whether he possessed any dutiable goods, the applicant replied in negative. During the personal search, the officers recovered four gold biscuits concealed inside his pant pockets. The four gold biscuits recovered from the applicant were totally weighing 400 gms. and valued at Rs. 10,89,600/- (Rupees Ten Lakh Eighty Nine Thousand Six Hundred Only). The applicant could not produce any valid permit / license / document in respect of the impugned gold biscuits. On enquiry, the applicant informed that the impugned gold biscuits were purchased by him from M/s J.S. Jewellers, Singapore from the savings out of his monthly income. He concealed the said gold to clear them without knowledge of Customs and without payment of duty. The impugned four gold biscuits were seized by the Customs Officers under reasonable belief that the applicant attempted to smuggle them in India without payment of appropriate Custom Duty.

3. The Original Adjudicating Authority vide Order-In-Original No. TCP-CUS-PRV-JTC-061-16 dated 29.08.2016 ordered absolute confiscation of four gold biscuits totally weighing 400 gms valued at Rs. 10,89,600/- under Section 111 (d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. The Adjudicating Authority also imposed penalty of Rs. 2,00,000/- under Section 112 (a) of the Customs Act, 1962 on the applicant.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner of Customs (Appeals-II), Trichy. The appellate authority vide Order in Appeal No. 07/2017 dated 10.01.2017 upheld the order in original.

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



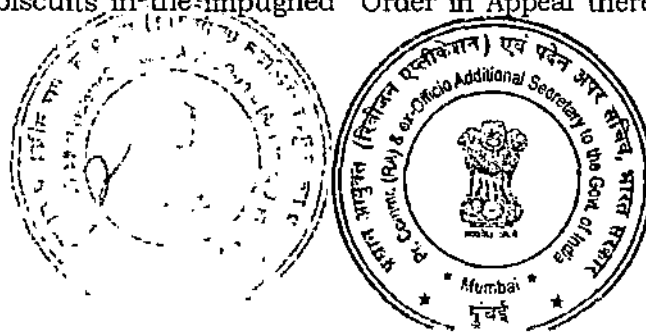
- 5.1 there was no concealment of gold biscuits. The applicant has kept the gold in his pant pockets purpose of safety to carry duing travel.
- 5.2 the confiscated gold do not fall under the category of 'Prohibited Goods'.
- 5.3 the confiscated gold ought to have been allowed to be redeemed under Section 125of the Customs Act, 1962.

6. Shri N. Manickam, Advocate on behalf of the applicant submitted vide his letter RA F. No. 373/51/B/16-RA dated 29.10.2018 that the applicants do not wish to be heard in person and requested to decide the case on merit.

7. The Government has gone through the facts of the case. The applicant was about to exit the arrival hall after crossing the green channel, he was intercepted by the Customs Officers. The applicant had written "No Commercial Value" in the column in Customs Declaration Form. On subsequent search of the applicant resulted in recovery of impugned four gold biscuits totally weighing 400 gms valued at Rs. 10,89,600/-. Since the applicant did not declare the impugned gold as required under Section 77 of the Customs Act, 1962, the confiscation of the same is justified in the instant case.

8. However, the facts of the case state that the impugned gold is claimed by the applicant and there is no other claimant. Thus the Government observes that the ownership of gold is not disputed. The gold biscuits were recovered on person from the inner side of pant pockets of the applicant and not ingeniously concealed. Under the circumstances absolute confiscation of the impugned gold biscuits appears to be harsh option. There is no reference of any previous offence against the applicant. Thus mere non submission of declaration cannot be held against the applicant.

9. There are 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. Under the circumstances, Government is of the opinion that a lenient view can be taken in the matter. The applicant has pleaded to allow option to redeem the impugned gold biscuits and the Government is inclined to accept the plea. The order of absolute confiscation of four gold biscuits in the impugned Order in Appeal therefore needs to be



modified and the confiscated gold biscuits are liable to be allowed to be redeemed payment of redemption fine and the penalty imposed could be reduced to meet the ends of justice.

10. Taking into consideration the forgoing discussion, Government allows redemption of the confiscated gold biscuits. The four gold biscuits totally weighing 400 gms valued at Rs. 10,89,600/- (Rupees Ten Lakh Eighty Nine Thousand Six Hundred Only) is ordered to be redeemed on payment of redemption fine of Rs. 4,00,000/- (Rupees Four Lakh Only) under Section 125 of the Customs Act, 1962. The penalty imposed under Section 112(a) of the Customs Act, 1962 is reduced from Rs. 2,00,000/- to Rs. 1,00,000/- (Rupees One Lakh Only).

11. The impugned Order in Appeal stands modified to that extent. Revision is partly allowed on above terms.

(Handwritten Signature)
20.11.18

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

ORDER No. ¹⁰⁰⁹ /2018-CUS (SZ) /ASRA/MUMBAI DATED 30.11.2018

To,

Shri

1. Shri P. Ganesan
S/o Packirisamy Rajan Kattalal,
Anna Pettai, P.O. Vedaranuam TK,
Nagapattinam, Dt. - 614 714

Copy to:

1. The Commissioner of Customs, Trichy, No.1, Williams Road, Tiruchirappalli- 620 001.
2. The Commissioner of Customs (Appeals-2), No. 1, Williams Road, Cantonment, Tiruchirappalli- 620 001.
3. Shri N. Manickam, Advocate, 37, 8th Cross, Renga Nagar, K.K. Nagar, Post Tiruchirappalli-620 021.
4. Sr. P.S. to AS-(RA), Mumbai.
5. Guard File.
6. Spare Copy.

