

REGISTEREDSPEED 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. 380/18/B/16-RA

2984

Date of Issue

02/06/21

ORDER NO. {35/201}-CUS (SZ)/ASRA/MUMBAI DATED 27.05.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, Chennai.

Respondent : Shri Karimul Ansari

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.CUS-I No. 398/2015 dated 24.08.2015 and 677/2015 dated 30.10.2015 both passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by the Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order C. CUS-I No. 677/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Karimul Ansari at the Anna International Airport, Chennai on 23.02.2015 as he was walking out through the green channel. Examination of his baggage resulted in the recovery of four gold bars kept in a perfume box. The gold totally weighed 400 grams valued at Rs. 9,97,224/- ( Rupees Nine lacs Ninety seven thousand Two hundred and twenty four ).

3. After due process of the law vide Order-In-Original No. 148/2015-16-Airport dated 19.06.2015 the Original Adjudicating Authority ordered confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 but allowed redemption on payment of Rs. 3,50,000/- ( Rupees Three lacs Fifty thousand) and imposed penalty of Rs. 90,000/- (Rupees Ninety thousand) under Section 112 (a) of the Customs Act,1962.

4. Aggrieved by this order the Applicant department as well as the respondent filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order No. 398/2015 dated 24.08.2015 deciding the Respondents appeal reduced the redemption fine to Rs. 2,00,000/- ( ( Rupees Two lacs ) and also reduced the penalty to Rs. 50,000/- (Rupees Fifty thousand ). The order in the Respondents appeal was issued before the Applicant departments filed its Appeal, The Applicant departments Appeal was therefore dismissed as infructuous vide order no. 677/2015 dated 30.10.2015.

5. Aggrieved with the above order the Applicant department has filed this revision application stating that the order of the Commissioner (Appeal) is not legal nor proper for the following reasons;

5.1 The manner of concealment and the non declaration of the gold as required under section 77 of the Customs Act,1962, inspite of being an ineligible to import gold clearly indicates that the respondent had a culpable

mind to smuggle gold. ; The respondent was not having any foreign currency to pay the customs duty; The respondent acted as a carrier when he was not the owner of the gold, the gold was supposed to be handed over to a person standing outside the airport; Being ineligible to import the gold the gold in question becomes prohibited; Boards circular No. 06/2014-Cus dated 06.03.2014 wherein in para 3(iii) it has been advised to be care ful to prevent misuse of the facility to bring gold by eligible persons hired by unscrupulous elements; Both the Original Adjudicating Authority and the Appellate Authority failed to appreciate the above aspects. The order of the Appellate Authority has the effect of making the smuggling of gold an attractive proposition since the passenger retains the benefit of redeeming the offending goods even when caught by the Customs which totally works against deterrence.

5.2 The Revision Applicant cited case laws in support of their contention and prayed that the redemption of the gold be set aside or any such order as deem fit.

6. The Respondent meanwhile filed a Writ Petition No. 17965 of 2016 before Hon'ble High Court of Madras for issuance of a writ of mandamus directing the respondent (Applicant department ) to release the gold and give effect to the impugned order in Appeal. In reply the Applicant department informed that the Hon'ble High Court of Madras that a Revision Application has been filed before the revision authority in this regard and awaiting orders. The Hon'ble High Court of Madras issued the following orders:-

*(a) " The Writ petition is disposed of directing the respondent to release the goods (gold) for purpose of re-export subject to the petitioner complying with the conditions imposed in the order passed by the Commissioner (Appeals) i.e., payment of redemption fine for re-export and personal penalty and also giving an undertaking to comply with the order in original, in the event the Department succeeds in the revision, with a period of two weeks from the date of receipt of a copy of this order.*

*(b) In the event there is no stay in the Revision Petition that has been preferred by the respondent, then it is hereby directed that the main revision petition*

*shall be disposed of within period of eight weeks from the date of receipt of a copy of this order. No costs."*

6. In view of the above, personal hearings in the case were scheduled on 27.08.2018, 17.09.2018, 26.09.2018 and on 08.12.2020, 15.12.2020, 22.12.2020 and 25.02.2021. Nobody attended the hearing on behalf of the Applicant department or Respondent. The case is therefore being decided on merits on the basis of available records.

7. The Government has gone through the case records. It is observed that the respondent did not declare the gold as required under section 77 of the Customs, Act, 1962 and had opted for the green channel. Therefore the confiscation of the gold is justified.

8. There are no allegations that the gold was ingeniously concealed and the gold was recovered from the respondents baggage. The respondent does not have an history of previous offences. The quantity of gold under import is small and the respondent has been working in Dubai from 2006 and is an eligible passenger to import gold. The impugned gold has been claimed by the respondent and he has produced purchase bills and a copy of his Visa card of Dubai Islamic Bank for proof of having purchased and as proof of his financial condition. The ownership is not disputed and considering overall circumstances of the case, the Original adjudicating authority has issued a well reasoned and considerate order allowing redemption for re-export on appropriate fine and penalty. Though the Respondent may have carried the same on behalf of someone else, considering other facts it would be an exaggeration to term the applicant as a carrier and dispossess him of the gold. Further, there are a number of judgments wherein the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 requires it to be exercised. The section also allows the gold to be released to the person from whose possession the goods have been recovered, if the owner of gold is not known. The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act is mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation. The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has

stated held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation. In the case of Union of India Vs Dhanak M. Ramji 2009 (248) E.L.T. 127 (Born.) affirmed vide 2010 (252) E.,L.T. A102 (S.C.) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered. In view of the precedent set by the case laws mentioned above, Government agrees with the order of the Appellate authority in releasing the gold on payment of redemption fine and penalty for re-export. Considering that re-export has been allowed, the redemption fine and penalty imposed in the order of the Appellate authority is reasonable given the facts of the case. The impugned Appellate order is therefore does not require interference.

9. In view of the above facts, The order of the Appellate authority is upheld.

10. Revision application is disposed of accordingly.

*Shrawan*  
27/5/21

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

ORDER No. 35/2021 -CUS (SZ) /ASRA/

DATED 27.05.2021

To,

1. The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.
2. Shri Karimul Ansari, No. 50, Darga Colony, 2<sup>nd</sup> street, Pallavaram, Chennai 600 043.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
2. Guard File.
3. Spare Copy.