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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/128/B/14-RA/16

Date of Issue 17.04.2018

ORDER NO. 169/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 11.04.2018 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. Hassan Mohideen Mohamed Ashraff

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 144/2014 dated 31.01.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

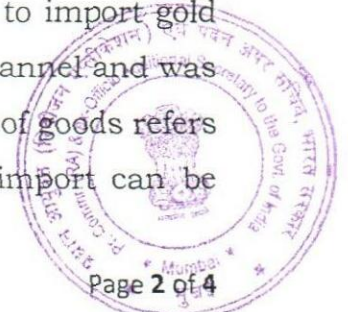
This revision application has been filed by Shri. Hassan Mohideen Mohamed Ashraff against the order no C. Cus No. 144/2014 dated 31.01.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, a Sri Lankan national, had arrived at the Chennai International Airport on 07.07.2012 and was intercepted by the officers of the Air Intelligence Unit while he attempted to go through Green channel exit. Examination of his baggage resulted in the recovery of 10 crude gold bars and strips ingeniously concealed in bottoms of the bags and in the grooves metallic frames which provide shape and support for bags. The gold totally weighing 898 gms and valued at Rs. 26,70,652/- (Rupees Twenty six lacs Seventy thousand Six hundred and Fifty two) was seized and the Applicant arrested and subsequently released on bail. After due process of the law the Original Adjudicating Authority, vide his order 699 dated 07.10.2013 absolutely confiscated the gold bars referred to above. A Penalty of Rs. 2,60,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No. 144/2014 dated 31.01.2014 rejected the Appeal.

4. The applicant has filed this Revision Application interalia on the following grounds that;

4.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; at the time of his arrest he had retracted his statements and claimed to be the owner of the gold; as he is a foreigner the question of eligibility to import gold does not arise; the applicant had not crossed the green channel and was all along at the red channel in the arrival hall; Prohibition of goods refers to arms, ammunition drugs etc gold being allowed for import can be



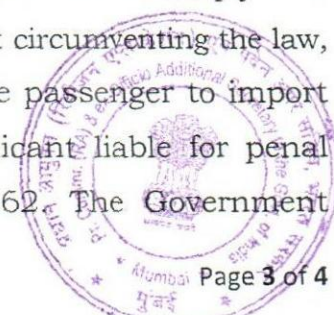


released under section 125 of the Customs Act, 1962 on payment of redemption fine and penalty; The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; that there is no provision for absolute confiscation of the goods.

4.3 The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed and prayed for permission to re-export the gold and reduction of personal penalty.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. Government has gone through the case records it is observed that the gold bars were ingeniously concealed in the bottoms of the bags and in the grooves metallic frames which provide shape and support for bags. There is absolutely no doubt that the concealment was intelligently planned and elaborately executed so as to evade Customs duty and to smuggle gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold bars without payment of customs duty. The Applicant is a foreign national. However every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. He was also not an eligible passenger to import gold. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government



therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

7. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 144/2014 dated 31.01.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

8. Revision Application is dismissed.

9. So, ordered.

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

ORDER No. 169/2018-CUS (SZ) /ASRA/MUMBAI

DATED 11-04-2018

To,

Shri Hassan Mohideen Mohamed Ashraff

C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai 600 001.

True Copy Attested

SANKARAN MUNDA  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

