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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/230/B/16-RA / 239

Date of Issue 03.05.2018

ORDER NO. 330/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 27.04.2018 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. K.K. Mohammed Abdulla  
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. 327 & 328 /2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. K.K. Mohammed Abdulla against the order no C. Cus No. 327 & 328 /2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National, had arrived at the Chennai Airport on 24.11.2015 and abandoned his baggage near the conveyor belt at the Chennai Airport. Examination of the baggage resulted in the recovery of 115 bits of gold indigenously concealed and sandwiched between beverage tin cans stuck one atop the other. The 115 gold bits totally weighing 2134 gms valued at Rs. 54,71,526/- (Rupees Fifty four lacs Seventy one thousand Five hundred and twenty six) were seized by the Customs officers under the provisions of Customs Act 1962. The Applicant was identified through the baggage tags and information provided by the Immigration officers and his residence was searched, however nothing incriminating was found. In his voluntarily statement he stated that he abandoned the baggage after he saw many Customs officers near the conveyor belt and rushed out through the exit. After due process the Original Adjudicating Authority, vide his order 79/22.08.2016 absolutely confiscated the gold bits referred to above. A Penalty of Rs. 5,50,000/- 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. 327 & 328 /2016 dated 28.10.2016 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; The gold is not a prohibited item and according to the liberalized policy the gold can be released on payment of redemption fine and penalty; Goods must be prohibited before import or export simply because of non-declaration goods cannot become prohibited; Discretion under section 125 of the Customs Act, 1962 was not utilized;



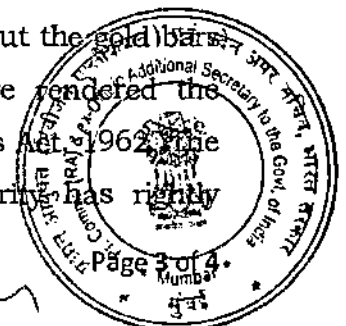
4.2 The Applicant further submitted that The Apex court in the case of Hargovind Dash vs Collector Of Customs 1992 (61) ELT 172 (SC) and several other cases has pronounced that the quasi judicial authorities should use the discretionary powers in a judicious and not an arbitrary manner; Even assuming without admitting that the Applicant is not the owner of the gold then the question of declaration does not arise, however the as per section 123 of the Customs Act, person from whom the goods are recovered is the owner.

Section 125 of the Customs Act, 1962 is very clear that even when confiscated the officer adjudicating may, in the case of any goods give it to the owner or the person from whose possession these goods have been recovered

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 on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 19.04.2018, 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. The Government has gone through the case records it is observed that the Applicant abandoned the goods on seeing the Customs officers near the conveyor belt. Clearly he was well aware that his modus operandi of concealment was about to be discovered and therefore escaped through the exit. It is also clear that he had no intention of declaring the gold. The gold bits were ingeniously concealed between two beverage cans stuck one atop the other. There is absolutely no doubt that the concealment was intelligently planned 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 bar without payment of customs duty. 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 a penalty on the Applicant. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

10. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 327 & 328 /2016 dated 28.10.2016 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

12. Revision Application is dismissed.

13. So, ordered.

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 330/2018-CUS (SZ) /ASRA/Mumbai

DATED 27.04.2018

To,

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

**True Copy Attested**

**SANKARSAN MUNDA**  
Asstt. Commissioner of Customs & 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.

