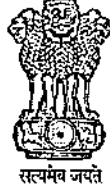


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GOVERNMENT OF INDIA  
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F.No. 373/68/B/17-RA/233

Date of Issue 03/05/2018.

ORDER NO 238/2018-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 M. Mohamed Ibrahim Hanifa

Respondent : Commissioner of C. Ex.& Cus (Airport), Visakapatanam.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 146/16-17 dated 24.03.2017 passed by the Commissioner (Appeals) Visakapatanam.



ORDER

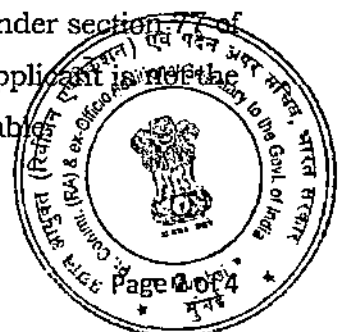
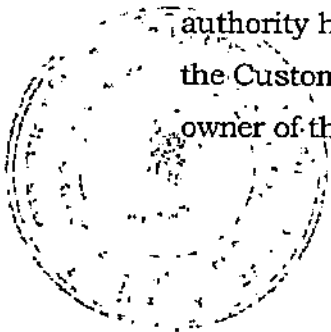
This revision application has been filed by Shri M. Mohamed Ibrahim Hanifa against the Order in Appeal no 146/16-17 dated 24.03.2017 passed by the Commissioner (Appeals) Visakapatanam.

2. On specific Intelligence that a group of passengers coming from Kaula Lumpur and Singapore would be attempting to smuggle gold concealed in electronic items the officers of DRI intercepted the Applicant among other passengers. Examination of his baggage resulted in the recovery of four gold rings totally weighing 2000 gms valued at Rs. 54,40,000/- ( Rupees Fifty four lacs Forty Thousand ) concealed in electric stove and microwave oven. After due process of the law the Original Adjudicating Authority, vide his order 32/2016 dated 10.05.2016 absolutely confiscated the gold rings referred to above under section 111(d) (i) and 111(l) of the Customs Act, 1962. A Penalty of Rs. 5,44,000/- under Section 112 (a) & (b) and a penalty of Rs. 2,72,000/- was also imposed under section 114AA of the Customs Act, 1962..

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Central Excise (Appeals-I) Madurai. The Commissioner of (Appeals) Visakapatanam, vide his Order in Appeal 146/16-17 dated 24.03.2017 rejected the Appeal.

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

4.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Adjudication Authority has simply glossed over the judgments and points raised in the Appeal grounds; There is no specific allegation that he attempted to pass through the Green channel He was all along the under the control of the customs officers at the Red Channel; the only allegation is that he did not declare the gold; No Show Cause Notice of personal hearing notices were served on the Applicant; Non supply of relied upon and referred documents is violation of article 21 of the Constitution of India. Hence they were not able to make their proper defence effective and meaningful; The Applicant has not made any false declaration and hence does not attract penalty under section 114AA; ; The adjudication authority has stated that he has not tendered his declaration under section 77 of the Customs Act,1962 and on the other hand claims that the Applicant is not the owner of the goods, both the claims are not simultaneously tenable.



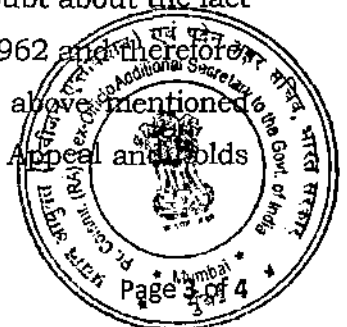
4.2 It has also been pleaded that Section 125 of the Customs Act, 1962 is very clear that even when confiscated the officer adjudicating may, in the case of any goods give it to the owner or the person from whose possession these goods have been recovered; The Applicant further submitted that The Apex 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; ; the Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions.

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 CAG 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 observed that the Applicant had concealed the gold rings in the Electric stove and Microwave oven. It was an attempt made with the intention to hoodwink the customs authorities. Government also notes that the gold rings were not declared by the Applicant. Filing of true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation of any passenger as he was not an eligible passenger to import gold.

7. The applicant had deliberately concealed the seized gold in the electronic device to avoid detection and to dodge the Customs Officer and smuggle out the same without payment of appropriate duty. This ingenious concealment 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 without payment of customs duty. There is no doubt about the fact that the Applicant has contravened the provisions of Customs Act, 1962 and therefore the seized gold is liable for absolute confiscation. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds



*Qm*

that the impugned gold has been rightly confiscated absolutely. Hence the Revision Application is liable to be rejected.

8. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal No. 146/16-17 dated 24.03.2017.

9. Revision Application is dismissed.

10. So, ordered.

*(Handwritten Signature)*  
21.4.18

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

ORDER No. 238/2018-CUS (SZ) /ASRA/mumbai

DATED 27.04.2018

To,

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

**True Copy Attested**

*(Handwritten Signature)*

**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

Copy to:

1. Commissioner of Customs(Airport) Visakapatanam
2. Commissioner of Customs (Appeals-I) Visakapatanam.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

