

**REGISTERED  
SPEED POST**



**F.No. 373/19/B/13-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue..... 31/11/14

Order No. 24 /14-cus dated 29.1.2014 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 1325/2012-Air dated 12-11-2012 passed by the Commissioner of Customs (Appeals), Custom House, Chennai.

Applicant : Shri Ashraf Puliya Parambil, c/o S. Palanikumar, Advocate, No. 10., Sunk Ram Street, Chennai-600 001.

Respondent : Additional Commissioner of Customs, Meenabakkam Airport, Chennai.

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ORDER

This revision application is filed by applicant Shri Ashraf Puliyaalla Parambil, c/o S. Palanikumar, Advocate, No. 10., Sunk Ram Street, Chennai against the Order-in-Appeal No. 1325/2012-Air dated 12-11-2012 passed by the Commissioner of Customs (Appeals), Chennai, with respect to Order-in-Original No. OS No. 526/2011 Air dated 20-10-2011 Chennai passed by the Deputy Commissioner of Customs, Air Port, Chennai.

2. Brief facts of the case are that the applicant arrived at Chennai Airport from abroad. He had attempted to smuggle 29 gold bars and 3 gold coins totally weighing 3402.5 grms valued at Rs. 13,84,818- (IV) and Rs. 14,15,440 (MV) concealed in 'Eveready' brand 1.5 Volt Batteries which were then seized under a mahazar. The adjudicating authority vide order (original) No. 31/2001 dtd. 13-06-2001 issued in file No. OS 247/2000-INT had confiscated absolutely the said gold bars and gold coins and imposed a penalty of Rs. 2,50,000/-. Aggrieved by this order, the party preferred an appeal before the CESTAT. CESTAT vide its final order No. 381/07 dt. 27-03-2007 while upholding the confiscation of the gold directed the adjudicating authority to give an option to the passenger to redeem the goods on payment of reasonable fine and penalty. Accordingly, Commissioner (Air) vide denovo adjudication order No. 1/2007 dt. 23-08-2007 in filed OS 247/2000-INT had allowed the passenger to redeem the goods on payment of fine of Rs. 15,00,000/- and imposed a penalty of Rs. 2,50,000/-. Against this order, the party preferred an appeal before the CESTAT. CESTAT vide its final order No. 569-571/2009 dt. 19-05-2009 reduced the fine to Rs. 5,00,000/- from Rs. 15,00,000/- and the penalty to Rs. 10,00,000/- from Rs. 2,50,000/-. Since the confiscated gold was disposed off by the department on 04-01-2006 and 30-03-2006 and realised the amount of Rs. 2598108, applicant Shri Ashraf Puliyaalla Parambil filed a claim for refund of Rs. 11,50,000/- with interest on 03-11-2009.

3. Being aggrieved by the said Order-in-Original applicant filed appeal before Commissioner (Appeals), who allowed refund of warehouse charge of Rs. 18,880/-

order dt. 19-05-2009 in final order No. 569-571 since the CESTAT has passed an order to redeem the goods on 27-03-2007, the adjudication authority should have calculated the interest amount from the date of CESTAT order but failed to do so.

4.5 The applicant made a refund application on 30-10-2009 but refund sanctioned on 10.2011 after lapse of 2 years and cheque issued only on 02-11-2011 without giving any interest thereon.

4.6 The seized gold weighing 3378.5 grms had been disposed of through the State Bank of India, Chennai on 04-01-2006 realizing Rs. 25,80,199.85 vide MC No. 0100476/04-01-2006 and 3 gld coins weighing 8 grams each were also deposited off through State Bank of India, Chennai on 30-03-2006 and realizing Rs. 17,908/- vide MC No. 0304088 dt. 30-03-2006. Totally, an amount of Rs. 25,98,108/- was realized in respect of the aforesaid confiscated gold. Though the gold has been disposed as mentioned above in the year 2006 but the working sheet disclosed that the warehouse charges collected from 14-12-2000 to 30-03-2006 and 30-03-2006 to 30-09-2010. If the adjudication authority had applied its mind on the material properly would not have collected the warehouse charges period even after goods disposed of. Thus it is clearly proved that the adjudication authority failed to apply its mind while passing the impugned order and hence the order is liable to be rejected on this point alone.

4.7 The adjudication authority has accorded sanction for refund amount sum of Rs. 11,35,959/- and issued a cheque bearing No. 178953 dt. 02-11-2011.

4.8 Once goods have been disposed of the authority cannot collect the duty for return of sale proceeds. Admittedly the goods have not been returned to the applicant.

The applicant cited the following case law:

- i) 2009 (235) ELT 402 (Bom.) Shabir Ahmed Abdul Rehman.

charged for the period of 30-03-2006 to 30-09-2010 and upheld the remaining part of impugned Order-in-Original.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

4.1 Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case.

4.2 The adjudicating authority failed to give an opportunity to the applicant before passing the impugned order. Further without hearing the applicant he has passed the impugned order which violating the natural justice and guarantee given under constitution of India.

4.3 The department is disposed the gold while pursuing the appeal is bad and hence the gold is liable to be returned. Since the department knowing well the case is subjudice without giving any care dispose the gold is arbitrary and mockery of justice and also abuse of process of law and also contempt of court. Thus it is clearly proved that the department did wrong and hence authority cannot escape from the liability and hence the department should return the gold as per order of the Commissioner of Customs. Further it is also against the existing policy.

4.4 The CESTAT Chennai has passed final an order in No. 381 to 383 on 27-03-2007 to remand the case for fresh adjudication and directing the adjudicating authority to given an option for redemption against payment of fine and up holding confiscation of the gold the Commissioner of Customs (Air), Chennai has passed an order in OS Ni, 247 of 2000 (Air) on 23-08-2007 to release the gold on payment of redemption fine sum of Rs. 15,00,000/- and also imposed the personal penalty sum of Rs. 2,50,000/- under section 125 of the Customs Act, 1962. Further the CESTAT modified order to reduce the redemption fie to Rs. 5,00,000/- from Rs. 15,00,000/- and also reduce the personal penalty to Rs. 1,00,000/- from Rs. 2,50,000/- by its

- ii) 2011 (263) ELT 685 (Tri. Mum.) Yakub Ibrahim Yusuf Vs. Commissioner of Customs, Mumbai.

5. Personal hearing was scheduled in this case on 25-06-2013, 24-07-2013, 31-10-2013 and 16-12-2013. Nobody appeared for personal hearing.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the applicant had attempted to smuggle gold bars and coins weighing to 3402.5 grms valued at Rs. 14,15,440/- concealed in 'Eveready' brand 1.5 volt batteries. The adjudicating authority had confiscated the said gold absolutely and imposed a penalty of Rs. 2,50,000/- on the applicant. The applicant preferred appeal before CESTAT who directed the lower authority to redeem the goods on payment of redemption fine. The adjudicating authority, Commissioner of Customs (Air) vide denovo adjudication order dt. 23-08-2007 allowed the applicant to redeem the said gold on payment of redemption fine of Rs. 15,00,000/- in lieu of confiscation under section 125 of Customs Act, 1962 and imposed a penalty of Rs. 2,50,000/-. The applicant preferred appeal before CESTAT who reduced redemption fine and personal penalty to Rs. 5,00,000/- and Rs. 1,00,000/- respectively vide final order dt. 19-05-2009. Since the impugned gold had been disposed off by the department on 04-01-2006 and 30-03-2006 respectively and realised an amount of Rs. 25,98,108/- the applicant filed a claim for refund of Rs. 11,50,000/- with interest on 03-11-2009. He adjudicating authority however sanctioned a refund of Rs. 11,35,959/- only after adjusting pre-deposit and deducting duty, redemption fine, penalty, warehousing charges and handing charges from the sale proceeds of the impugned goods. In appeal, the commissioner (Appeals) allowed refund of warehouse charges for the period of 30-02-2006 to 30-09-2010. Now in this revision application the applicant had pleaded to refund duty amount and pay interest as per the judgment of Apex Court for delayed payment and re-fix the warehouse charges.

8. The applicant has contended that since the goods have disposed off hence duty cannot be collected; that the interest of 9% per Annum for the sale proceeds be paid for delayed payment and warehousing charges may be re-fixed. The applicant has cited the following case laws department of his defence:

- i) 2009 (235) ELT 402 (Bom.) Shabir Ahmed Abdul Rehman.
- ii) 2011 (263) ELT 685 (Tri. Mum.) Yakub Ibrahim Yusuf Vs. Commissioner of Customs, Mumbai.

9. On perusal of records Government notes that all the issue raised in this revision application have also been raised before Commissioner (Appeals). The Commissioner (Appeals) in his finding portion of Order-in-Appeal 1325/2012 dt. 22-11-2012 has observed as under:

" I have carefully gone through the records of the case, the grounds of appeals and the cited case laws and the cross objections of the department.

(a) The main issue to be decided in this case is whether the refund has to be paid without deducting the duty as claimed by the applicant or not. In support of his claim the applicant had quoted judgment of Hon'ble High Court Mumbai reported in 2009 (235) ELT 402 (Bom) Shabir Admed Abdul Rehman and judgment of Hon'ble CESTAT 2011 (263) ELT 685 (Tri.-Mumabi) Yakub Ibrahim Yusuf Vs. Commissioner of Customs, Mumbai. However, I find that the CESTAT's judgment relies on the judgment of the Hon'ble High Court, Mumbai and this judgment has been stayed by the Apex Court vide order dated 15-05-2009 in SLP No. CC6571/09 {2010 (253) ELT A142 (SC)}. The Hon'ble CESTAT, South Zonal Bench, Chennai in the case of Commissioner of Customs, Trichy Vs. K.Balaganesan { 2011 (268) ELT 498 {Tri.-Chennai}} has observed that

*" para-21. After all, the sale price is only the cum-duty price. If the duty element from the sale proceeds is also given to the respondents, they would be unjustly enriched as they would be refunded the duty which they have not paid. Section 27 of the act allows refund of duty which is paid by a person or which is borne by a person. In the instant case, the respondents have neither paid the duty nor have borne the duty and therefore, the duty portion cannot be refunded to them, which has been recovered as a part of the sale proceeds. The impugned imported goods have gone into home consumption subsequent to sale, and there is no reason why the exchequer should not retain the duty*

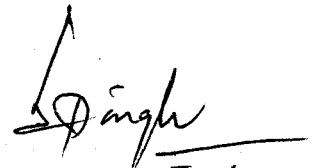
portion." I find that the above referred judgment squarely applicable in the present case. I therefore do not find any merit in the applicant's claim for refund of the duty portion and accordingly reject the same. "

9.1 Government notes that in view of above said judgment in the case of CC Trichy Vs. K.Balaganesan, applicant's refund claim for duty portion is rightly rejected by appellate Commissioner. As regards interest claim, Government notes that section 27A of Customs Act grants interest on delayed refund of duty. In this case amount of sale proceeds are refunded and therefore provisions of section 27A of Customs Act, 1962 are not attracted. Government also notes that excess warehouse charges of Rs. 18880 are already ordered to be refunded. As such Government agrees with the findings of Commissioner (Appeals).

10. In view of above position, Government do not find any infirmity in the impugned Order-in-Appeal and therefore upholds the same.

11. Revision Application is thus rejected being devoid of merit.

12. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

Mr. Ashraf Puliya Parambil,  
C/o. Shri S. Palanikumar, Advocate,  
No. 10, Sunku Ram Street, (II Floor),  
Chennai-600 001.

ATTESTED

Order No. 24 /14-Cus Dated 29.1.2014

Copy to:

1. The Commissioner of Customs, Custom House, Chennai-1
2. The Commissioner of Customs (Appeals), Custom House, 33 Rajaji Salai, Chennai-600001.
3. The Deputy Commissioner of Customs, Air Cargo Complex, Chennai-600001.
4. Shri.S. Palanikumar, Advocate, No. 10, II Floor, Sunku Ram Street, Chennai-1.
5. PS to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

(T.R.Arya)  
SUPRINTENDENT (REVISION APPLICATION)