

REGISTERED
SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/221/B/15-RA / 228

Date of Issue 03/05/2018

ORDER NO. 243/2018-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. Arumugam Velayutham

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. 230 /2015 dated 29.05.2015 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Arumugam Velayutham against the order no C. Cus No. 230 /2015 dated 29.05.2015 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 Airport on 28.04.2015 he was intercepted as he was trying to exit through the Green channel without declaration. Examination of the baggage resulted in the recovery of gold weighing 132 gms valued at Rs. 3,22,405/- (Rupees Three Lacs Twenty Two thousand Four hundred and five) indigenously concealed as T-shaped rods camouflaged with black paint and kept along with the metal part in the base used for pulling the suitcase. After due process the Original Adjudicating Authority, vide his order 479/2015 Batch D dated 28.04.2015 absolutely confiscated the gold bits referred to above. A Penalty of Rs. 32,500/- 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. 230 /2015 dated 29.05.2015 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; He was all along the red Channel under the control of the officers and he was at the Red channel and he did not pass through the Green Channel; He was not aware of the procedure; The question of eligibility is does not arise as he is a foreigner; Discretionary powers under section was not used; 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

4.2 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. The high court of Andhra Pradesh in the case of Sheik Jamal Basha vs GOI reported in

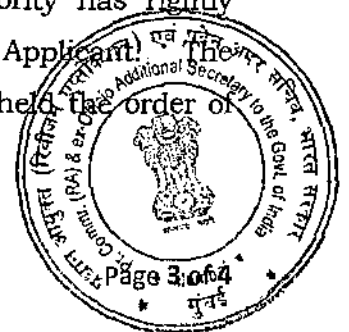


1997 (91) ELT 277 (AP) held that under section 125 of the Customs Act, 1962 it is mandatory to give option to the person found guilty to pay in lieu of confiscation. Further there are no provision for absolute confiscation of the goods.

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 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, the Applicant is a foreigner, 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. Government observes that the gold was indigenously concealed as T-shaped rods camouflaged with black paint and kept along with the metal part in the base used for pulling the suitcase. The Applicant is a frequent traveller, and therefore well aware of the rules, his modus operandi of concealment clearly indicates that it was done in order to hoodwink the Customs Officers. 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 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. 230 /2015 dated 29.05.2015 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

12. Revision Application is dismissed.

13. So, ordered.

(Handwritten Signature)
27.4.2018

(ASHOK KUMAR MEHTA)

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

ORDER No. 243/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 27.04.2018

To,

Shri Arumugam Velayutham
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

(Handwritten Signature)
m/18

SANKARSAN 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.

