

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. 373/222/B/15-RA

Date of Issue 01/06/2018

ORDER NO 317/2018-CUS (SZ) / ASRA / MUMBAI DATED 31.05.2018 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 Sivaraj

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-I No.342/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by Shri Sivaraj (herein after referred to as the Applicant) against the Order in Appeal No. C. Cus-I No.342/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 20.10.2014 and was intercepted by the Customs Officers and examination on his person resulted in the recovery of assorted gold jewellery totally weighing 359 grams and totally valued at Rs.8,18,827/- (Eight lakhs eighteen thousand eight hundred and twenty seven). The gold was concealed in his socks, underwear and pant pockets.

3. After due process of the law vide Order-In-Original No. 1303/2014-AIR dated 28.03.2015, the Original Adjudicating Authority confiscated the assorted gold jewellery totally weighing 359 grams and totally valued at Rs.8,18,827/- under section 111 (d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992; and also gave him an option to redeem the same for re-export on payment of fine of Rs.3,50,000/- under Section 125 of the Customs Act, 1962. A Personal penalty of Rs. 80,000/- was also imposed under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this order the Assistant Commissioner (Review Cell-Air) filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals-I) Chennai, vide his Order in Appeal C. Cus-I No.342/2015 dated 29.06.2015 ordered absolute confiscation of the gold and upheld the Appeal.

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

5.1 the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in



the Appeal grounds; The Applicant has retracted his statements as involuntary and obtained under coercion and treat; 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 after import; The goods must be prohibited before export or import mere non-declaration cannot render the goods prohibited; there are no specific allegations that he had tried to cross the Green Channel, he was all along at the red channel under the control of the officers; Section 125 of the Customs Act does not make any distinction between the owner and the carrier; The customs duty is mandatory but fine and penalty is not mandatory especially when there is no specific allegation that he had tried to evade duty;

5.2 The Applicant further pleaded that the Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has held that under section 125 of the Act, it is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation; 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;

5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for redemption under section 125 of the Customs Act, 1962 and prayed for setting aside the Order in Appeal and permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. It is a fact that the gold jewelry was not declared by the Applicant as required under Section



77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. However, the absolute confiscation in the Order in Appeal mainly relies on the initial statement of the Applicant that the is not the original owner of the gold, and that the gold was given to the Applicant by a third party to be given to another person. The Applicant has retracted the statements. However, it is observed that Section 125 of the Customs Act, 1962 does not make any distinction between the Owner and the Carrier of the goods, "**Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,]**". The Government therefore observes in absence of identification of the owner, the person from whose possession such goods have been seized is the owner.

9. Further, The gold is claimed by the Applicant and there is no other claimant. The facts of the case also reveal that the Applicant was intercepted on a reasonable suspicion that he was carrying gold, and therefore even before, he attempted to exit through the Green Channel. The gold was carried on his person and was not ingeniously concealed. There are no previous offences registered against the Applicant. Gold is restricted and not prohibited as per Foreign Trade Policy. In view of the above the absolute confiscation ordered in the impugned Order in Appeal is harsh and therefore needs to be set aside and the confiscated gold is liable to be allowed for re-export on payment of redemption fine and penalty.

10. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The absolute confiscation of the gold is therefore unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant (Alias)



pleaded for re-export and the Government is inclined to accept the plea. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore needs to be set aside.

11. Taking into consideration the foregoing discussion, Government sets aside the impugned Order in Appeal No. C. Cus-I No.342/2015 dated 29.06.2015. The Order in Original is upheld. Revision application is allowed on above terms.

12. So, ordered.

(Signature)
31.5.2018

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

ORDER No.317/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.05.2018

To,

True Copy Attested

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

(Signature)
31/5/18

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-I), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

