

REGISTERED  
SPEED POST

सत्यमेव जयते

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

F.No. 373/268/B/15-RA/579

Date of Issue 06/06/2018

ORDER NO. <sup>337</sup> /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 Burhan Shaikh Hussain

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.  
572/2015 dated 28.09.2015 passed by the Commissioner of  
Customs (Appeals-I) Chennai.



ORDER

This revision application has been filed by Shri Burhan Shaikh Hussain (herein after referred to as the Applicant) against the Order in Appeal No. C. Cus-I No. 572/2015 dated 28.09.2015 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 25.11.2014 and was intercepted by the Customs Officers and examination on his person resulted in the recovery of a 6 (six) gold bars totally weighing 699 grams valued at Rs. 16,54,030/- (Sixteen Lakhs Fifty four thousand and thirty) concealed beneath his feet in his socks.

3. After due process of the law vide Order-In-Original No. 02/2015-16-AIR dated 01.04.2015, the Original Adjudicating Authority confiscated the gold bars but allowed the Applicant to redeem the same on payment of redemption fine of Rs. 6,50,000/- under section 125 of the Customs Act, 1962. A Personal penalty of Rs. 1,50,000/- 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. 572/2015 dated 28.09.2015 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 Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; Gold is not a prohibited item and according to the liberalized policy can be released on redemption fine and penalty; he did not try to cross the Green Channel, he was all along at the red channel under the control of the officers; The only allegation against him is that he did not declare the gold; Goods must be prohibited before import or export simply because of non-declaration goods cannot become prohibited after import; There are several judgements by the Hon'ble Supreme Court, High Courts wherein it has been that power under Section 125 of the Customs Act, 1962 must be exercised.

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;

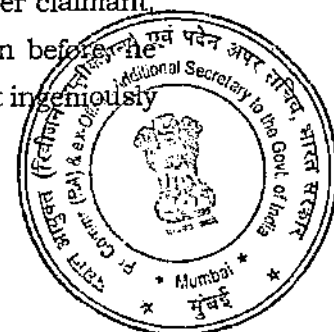
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing gold for redemption under section 125 of the Customs Act, 1962 and prayed for setting aside the Order in Appeal and permission to re-export the gold on payment of nominal redemption fine and reduced 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 bracelet 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 has questioned the purchase of the seized gold by the Applicant. The order in Appeal also states that the Adjudication Authority has accepted the Applicants contention without evidence / documents. The Government however notes that para 5 of the Original Adjudication order has stated that the Applicant went abroad to collect his pending salary of two and a half years, On receipt of his salary, he purchased the impugned gold. The Original Adjudication order then clearly states that "***In support of his averments, he submitted copies or original bills and requested for a lenient view and release the gold for re-export.***". The same has also been repeated in para 6 of the Discussions and Findings. It is clear from the above that the Adjudication Authority after satisfying himself of the genuiness of the transaction and the documents submitted has therefore allowed the redemption of the gold on payment of redemption fine and penalty. The Government observes that the gold was though concealed was not concealed ingeniously. There are no previous offences registered against the Applicant. Under the circumstances the absolute confiscation ordered in the impugned Order in Appeal is unjustified.

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 even before he exited the Green Channel. The gold was carried on his person and was not ingeniously



concealed. Gold is restricted and not prohibited as per Foreign Trade Policy. 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. In view of the above, the absolute confiscation ordered in the impugned Order in Appeal is harsh and therefore needs to be set aside.

10. Taking into consideration the foregoing discussion, Government sets aside the impugned Order in Appeal No. C. Cus-I No. 572/2015 dated 28.09.2015. The Order in Original is upheld. Revision application is allowed on above terms.

11. So, ordered.

*(Handwritten Signature)*  
21.5.18

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

ORDER No. <sup>337</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.05.2018

To,

**True Copy Attested**

Shri Burhan Shaikh Hussain  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

*(Handwritten Signature)*

**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.

