



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. 373/26/B/16-RA

Date of Issue 09/07/2018

ORDER NO. 387/2018-CUS (SZ)/ASRA/MUMBAI DATED 05.06.2018 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 Sehanudeen Sulthan

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus-I No. 577/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Sehanudeen Sulthan (herein referred to as Applicant) against the order 577/2015 dated 28.09.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant at the Chennai International Airport on 13.08.2015. The Applicant had not declared the goods and had opted for the green channel. Examination of her person resulted in recovery of a gold bar, kept in his undergarments weighing 100 grams valued at Rs. 2,27,799/- (Rupees Two Lakhs Twenty seven thousand Seven hundred and Ninety nine).

3. The Original Adjudicating Authority, vide order No. 818/2015 Batch D dated 13.08.2015 absolutely confiscated the gold mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 23,000/- was imposed under Section 112 (a) of the Customs Act, 1962.

4. 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 No. 577/2015 dated 28.09.2015 upheld the absolute confiscation of the gold but reduced the personal penalty to Rs. 10,000/-.

5. Aggrieved with the above order the Applicant has filed this revision application inter alia 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; The gold was kept in his pant pocket and it was not concealed; Gold is not a prohibited item and as per the liberalized policy it can be released on payment of redemption fine and penalty; There is no allegation that he tried to cross the green channel, he was all along under the control of the officers at the red channel; Even assuming without admitting that he did not declare the gold it is only a technical fault.

5.2 The Applicant further pleaded 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.



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;

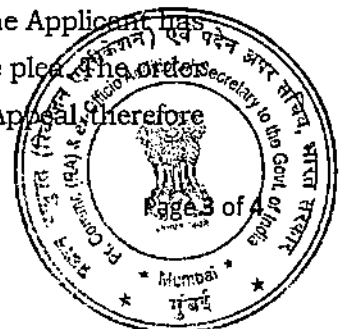
5.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export, and prayed for allowing re-export and reduction of the redemption fine and reduce personal penalty and thus render justice.

6. A personal hearing in the case was held on 19.04.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. At first he pleaded that the delay in filing the Revision Application by 32 days may be condoned as the adjudication order was misplaced by the Applicant inadvertently. 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. In the interest of justice, delay of 32 days is condoned and revision application is decided on merits. The goods were not declared by the passenger as required under Section 77 of the Customs Act, 1962. Under the circumstances confiscation of the goods is justified.

8. However, the Applicant was not intercepted while trying to exit the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant does not have any previous offences registered against him. Government, ~~observes that there is no allegation of ingenious concealment. Further, The~~ ~~AGNOM/19/2001~~ ~~Director~~ ~~2001~~ gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature. Thus, mere non-submission of the declaration cannot be held against the Applicant. The absolute confiscation is therefore unjustified.

9. Further, 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 facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export and the Government is inclined to accept the plea of the order of absolute confiscation of the gold in the impugned Order in Appeal, therefore



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needs to be modified and the confiscated goods are liable to be allowed for re-export on payment of redemption fine and penalty.

10. In view of the above, Government allows redemption of the confiscated goods for re-export in lieu of fine. The impugned gold totally weighing 100 grams valued Rs. 2,27,799/- (Rupees Two Lakhs Twenty seven thousand Seven hundred and Ninety nine) is ordered to be redeemed for re-export on payment of redemption fine of Rs1,00,000/- (Rupees One lakh) under section 125 of the Customs Act, 1962. Government observes that the penalty of Rs. 10,000/- (Rupees Ten thousand) is appropriate.

11. The impugned Order in Appeal stands modified to that extent. Revision application is partly allowed on above terms.

12. So, ordered.

*(Signature)*  
S.G.V

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

ORDER No.389/2018-CUS (SZ) /ASRA/Mumbai

DATED 05.06.2018

To,

Shri Sehanudeen Sulthan  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High Court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

Copy to:

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

**Attested**

*(Signature)*  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Customs & C. Ex.

