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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/23,24 & 25/B/16-RA | 07

Date of Issue 11/07/2018

ORDER NO. ⁴⁰²⁻⁴⁰⁴ /2018-CUS (SZ)/ASRA/MUMBAI DATED 06.06.2018 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 Vasant Tejas
: Smt. Sharvari
: Smt. Anjum

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.
650-652/2015 dated 12.09.2015 passed by the Commissioner of
Customs (Appeals), Chennai.



ORDER

These revision applications have been filed by Shri. Vasant Tejas, Smt Sharvari and Smt. Anjum (herein referred to as Applicants) against the order 650-652/2015 dated 12.09.2015 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicants, Indian citizens, at the metal detector frame of the Arrival hall at the Chennai International Airport on 10.04.2014. Examination of their person resulted in recovery of a gold chain from Shri Vasant Tejas weighing 102 grams valued at Rs. 3,00,900/-, Two gold bars, Two gold bangles, one gold ring and a gold chain from Smt. Sharvari totally weighing 1937 grams valued at Rs.57,14,150/- and Two gold bars, Two gold bangles and a gold chain from Smt. Anjum weighing 1916 grams valued at Rs. 56,52,200/- . The gold jewelry was worn by the Applicants and the gold bars were kept concealed in their inner garments.

3. The Original Adjudicating Authority, vide order No. 43/27.04.2015 absolutely confiscated the gold bars and gold jewelry totally weighing 3955 grams valued at Rs. 1,16,67,250/- (Rupees one crore, Sixteen lakhs Sixty seven thousand two hundred and Fifty) mentioned above under section 111(d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 2,00,000/- each was imposed under Section 112 (a) of the Customs Act,1962, on Smt Sharvari and Smt. Anjum. As Shri Vasant Tejas was the owner of the gold and had engaged the services of the two ladies a penalty of Rs. 10,00,000/- was imposed on 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. 650-652/2015 dated 12.09.2015 rejected the Appeal of the Applicant.

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; Gold is not a prohibited item and as per liberalized policy can be released on payment of redemption fine and penalty; The Applicants were intercepted at the at the metal detector frame of the Arrival hall, there are no allegations that they were trying to cross the green channel as such the question of attempt to smuggle the gold does not arise; No



opportunity was given to declare the gold, therefor the act of seizure is premature; Section 125 of the Act does not discriminate between the owner and the carrier, even if confiscation is authorized the goods can be released to the owner or carrier.

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; 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;

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. 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 case records it is observed that the Applicants did not declare the gold as required under Section 77 of the Customs Act, 1962. Even after their interception they were given an opportunity to declare the gold, but they did not declare the gold. More than one kilogram of gold each, was ingeniously concealed in the inner garments worn by the Applicants. The Applicant Shri Vasant Tejas has utilized the services of the two ladies and has elaborately planned the entire smuggling operation. There is absolutely no doubt that the concealment was intelligently planned so as to evade Customs duty and to smuggle the gold into India. In their statements, recorded by the officers the Applicants have revealed that such trips to smuggle gold have also been undertaken earlier. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner and properly declared as per Section 77 of the Customs Act, 1962. The actions of the Applicant indicate that they are habitual offenders and they had no intention of declaring the gold to the authorities. Their success in the earlier ventures had embolden them to carry out similar ventures repeatedly. If they were not intercepted before the exit, the Applicants would have again taken out the gold without payment of customs duty. The absolute confiscation of the gold is therefore necessary so as to deter them, and discourage them from such activities in future.

8. In view of the above seized gold liable for confiscation under Section 111 of the Customs Act, 1962 and the Applicants liable for penal action under section 112 (a) of the Customs Act, 1962



Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed penalties on the Applicants. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds the Appellate order C. Cus-I No. 650-652/2015 dated 12.09.2015 passed by the Commissioner of Customs (Appeals) as legal and proper does not warrant any interference.

10. Impugned Revision Applications are accordingly dismissed.

12. So, ordered.

(Signature)
661K

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

402-404
ORDER No. /2018-CUS (SZ) /ASRA/MUMBAI.

DATED 06.06.2018

To,

Shri Vasant Tejas,
Smt. Sharvari
Smt. Anjum
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High Court, 2nd 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)
11/7/18

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

