



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. 373/242/B/16-RA

Date of Issue 16/07/2018

ORDER NO. 421/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 12.06.2018 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 Sadiq Ali

Respondent : Commissioner of Customs(Airport), Vishakapatnam.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. VIZ-CUSTM-000-APP-069-16-17 dated 27.09.2016 passed by the Commissioner (Appeals) Vishakapatnam.



ORDER

This revision application has been filed by Shri Sadiq Ali (herein after referred to as the Applicant) against the order No. VIZ-CUSTM-000-APP-069-16-17 dated 27.09.2016 passed by the Commissioner (Appeals), Vishakapatnam.

2. Briefly stated the facts of the case is that on 28.07.2015 the Applicant was intercepted by the officers of Air Intelligence Unit. The Applicant when subjected to metal detector scan around his mouth, alerted the officers which resulted in the recovery two gold pieces weighing 64.21 grams valued at Rs. 1,61,552/- (Rupees One lakh Sixty one thousand Five hundred and Fifty two) concealed in his mouth.

3. The Original Adjudicating Authority vide Order-In-Original No. 75/2015-AIU (Airport) ordered for absolute confiscation of the impugned gold under Section 111 (d), and (l) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 15,000/- under Section 112 (a) of the Customs Act.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal No. VIZ-CUSTM-000-APP-069-16-17 dated 27.09.2016 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following 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 simply glossed over all the judgements and points raised in the Appeal grounds; Gold is not a prohibited item and can be released on payment of redemption fine and baggage duty; Section 125 of the customs Act 1962 does not make any distinction between the owner and the carrier; The averment that the gold is received from another person amounts to extraneous consideration; The order one way states that the passenger has not declared the gold and on the other hand states that Applicant is not the owner of the gold, even assuming without admitting the Applicant is not the owner then the question of declaration does not arise, as only the owner can file a declaration; there is no specific allegation that he tried to pass



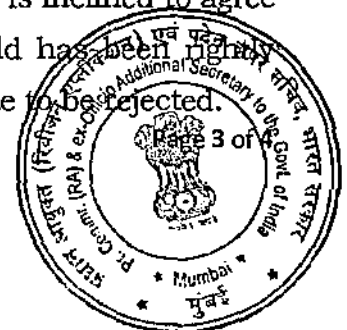
through the green channel, He was all along at the red channel under the control of the officers.

5.2 The Applicant further pleaded that as per the Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act 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 in support of re-export even when the gold was concealed and prayed for setting aside the impugned order 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 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.

The Government has gone through the case records it is observed that the Applicant was given enough opportunities to declare the gold, he however did not declare the gold pieces at the time. The gold pieces were concealed below his tongue in his mouth. This is a novel modus operandi. 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 pieces without payment of customs duty. In view of the above mentioned observations the Government is inclined to agree with the Order in Appeal and holds that the impugned gold has been rightly confiscated absolutely. Hence the Revision Application is liable to be rejected.



9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order VIZ-CUSTM-000-APP-069-16-17 dated 27.09.2016 passed by the Commissioner (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

11. So, ordered.

*Ashok Kumar Mehta*  
12.06.2018

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

ORDER No. 42/2018-CUS (SZ) /ASRA/Mumbai

DATED 12.06.2018

To,

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

**Attested**

Copy to:

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

*Sankar Munda*  
16/7/18

**SANKARSAN MUNDA**  
Asstt. Commissioner of Customs & C. Ex.

