



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

F.No. 373/244/B/16-RA | १११

Date of Issue 18/07/2018

ORDER NO. 446/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 25.06.2018
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 Shaikh Mohammad Rafi

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of
the

Customs Act, 1962 against the Order-in-Appeal
No. 306/2016 dated 27.09.2016 passed by the
Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri Shaikh Mohammad Rafi (herein after referred to as the Applicant) against the order No. 306/2016 dated 27.09.2016 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that on 28.08.2015 the Applicant was intercepted by the officers of Air Intelligence Unit. Examination of his baggage resulted in the recovery of Four cut gold bars weighing 886 grams valued at Rs. 23,52,330/- (Rupees Twenty three lakhs Fifty two thousand Three hundred and thirty) ingeniously concealed in the two locks brought by the Applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 49/11.07.2016 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. 2,30,000/- 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. 306/2016 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; Gold is not a prohibited item and can be released on payment of redemption fine and baggage duty; The Appellate Authority has simply glossed over all the judgements and points raised in the Appeal grounds; Goods must be prohibited before import or export simply because of non declaration goods cannot become prohibited; The Adjudication Authority has not exercised the option under section 125; The Applicant is an eligible passenger; He was all along under the control of the officers at the Red channel and has not attempted to pass through the green channel;



5.2 The Applicant further pleaded that as per the judgement by CEGAT South Zonal Bench , Chennai in the case of Shaikh Shahabuddin vs Commissioner of Customs Chennai has held that absolute confiscation without giving the option of redemption for gold concealed in shaving cream tubes is not proper, and the case was remanded for denovo adjudication;

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.

7. The Government has gone through the case records it observed that the Applicant had ingeniously concealed the gold in the two locks. It was an attempt made with the intention to get past the customs authorities. The concealment of the gold was deliberately planned to avoid detection and to dodge the Customs Officer and smuggle out the same without payment of appropriate duty. This ingenious concealment clearly indicates mensrea, and that there was no intention of declaring the gold to the authorities and if it was not intercepted, the gold would not suffer payment of customs duty. There is no doubt about the fact that the provisions of Customs Act, 1962 has been contravened and therefore, the seized gold is liable for absolute confiscation. 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 so as to deter such passengers from such activities in the future. Hence the Revision Application is liable to be rejected.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 306/2016 dated 27.09.2016 passed



by the Commissioner of Customs (Appeals), is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

Ashok Kumar Mehta
25.6.2018

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

ORDER No. ⁴⁴⁶/2018-CUS (SZ) /ASRA/MUMBAI DATED 25.06.2018

To,

Shri Shaikh Mohammad Rafi
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, Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

Attested

Sankarsan Munda
28/7/18
SANKARSAN MUNDA
Asstt. Commissioner of Customs & C. Ex.

