



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. 373/203/B/16-RA

Date of Issue 19/07/2018

ORDER NO. 457/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 25.05.2018 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 Abdul Majeed Anwar Ali

Respondent : Commissioner of Customs(Airport), Cochin

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 91/2016-17 dated 13.09.2016 passed by the Commissioner of Customs (Appeals) Cochin.



ORDER

This revision application has been filed by Shri Abdul Majeed Anwar Ali (herein after referred to as the Applicant) against the order no 91/2016-17 dated 13.09.2016 passed by the Commissioner of Customs (Appeals), Cochin.

2. Briefly stated the facts of the case is that the applicant arrived at the Cochin Airport on 24.02.2016. Examination of his person resulted in the recovery of four gold coins weighing 62.24 grams valued at approximately Rs. 1,72,945/- from his wallet and one cut gold piece in the sole of his right shoe weighing 52.64 grams valued at approximately Rs. 1,46,270/-.

3. The Original Adjudicating Authority vide Order-In-Original No. 81/2016 dated 24.02.2016 ordered absolute confiscation of the impugned gold under Section 111 (d), (i) (l) and (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 20,000/- 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. 91/2016-17 dated 13.09.2016 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application inter alia 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 according to the liberalized policy can be released on redemption fine and penalty; Ownership of the gold is not disputed and there is no ingenious concealment; There are no specific allegations that he passed through or tried to cross the Green Channel; As per section 125 of the Customs Act even when confiscation is authorized the goods can be released on redemption fine and penalty; The Adjudication Authority has not exercised the option under section 125; 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; Section 125 of the customs Act 1962 allows the goods to be released on Redemption fine and penalty even when confiscation is authorized.



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; The Hon'ble Supreme Court has in the case of Om Prakash vs Union of India states that the main object of the Customs Authority is to collect the duty and not to punish the person for infringement of its provisions;

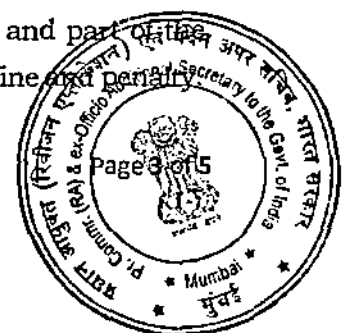
5.3 The Revision Applicant cited various assorted judgments in support of his case and prayed for re-export of redemption fine and reduced personal penalty.

6. A personal hearing in the case was held on 07.03.2018, 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 facts of the case. 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 intercepted before he exited the Green Channel. The gold coins were recovered from his wallet, but one cut gold piece was concealed in a sole of his right shoe. There was a concerted attempt at smuggling this gold piece into India. The Applicant does not have any previous offences registered against him. Government, also observes that there is no allegation of ingenious concealment with regard to the gold coins but the gold piece was definitely concealed ingeniously so as to avoid detection and avoid the payment of Customs duty. Government observes that the Applicant has pleaded for re- export of the gold on payment of redemption fine and reduced personal penalty and the Government is inclined to accept the plea only in the case of the Gold coins as it was not ingeniously concealed. With regard to the gold piece the actions of the Applicant indicate that he had no intention of declaring it to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold piece without payment of customs duty. In view of the above facts, the impugned Order in Appeal therefore needs to be modified and part of the confiscated goods are liable to be allowed for re-export on redemption fine and penalty.

ADHIM INSHAKHAS  
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9. In view of the above, Government allows redemption of the confiscated gold coins for re-export in lieu of fine. The gold coins weighing 62.24 grams valued at approximately Rs. 1,72,945/- (Rupees One lakh Seventy Two thousand Nine hundred and Forty Five) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 65,000/- (Rupees Sixty Five thousand) under section 125 of the Customs Act, 1962. Government also observes that the facts of the case justify reduction in the penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 20,000/- (Rupees Twenty Thousand ) to Rs. 15,000/- ( Rupees Fifteen thousand) under section 112(a) of the Customs Act, 1962.

10. The Government finds no reason to interfere with the Order-in-Appeal, with regard to the cut gold piece ingeniously concealed in the sole of shoe. The impugned Appellate order No. 91/2016-17 dated 13.09.2016 of the Commissioner of Customs (Appeals), confiscating absolutely the gold piece weighing 52.64 gms valued at approximately Rs. 1,46,270/- ( Rupees One Lakhs Forty Six thousand Two hundred and Seventy) upheld as legal and proper.

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

12. So, ordered.

*Ashok Kumar Mehta*  
25.6.2018

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

ORDER No. <sup>457</sup>/2018-CUS (SZ) /ASRA/MUMBAI. DATED 25.06.2018

To,

Shri Abdul Majeed Anwar 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, Airport, Cochin.
2. The Commissioner of Customs (Appeals), Cochin.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

*Sankarsan Munda*  
19/7/18  
**SANKARSAN MUNDA**  
Asstt. Commissioner of Custom & C. Ex.

