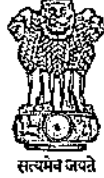


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GOVERNMENT OF INDIA  
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Mumbai-400 005

F.No. 373/167/B/16-RA/970

Date of Issue 19/07/2018

ORDER NO. 458/2018-CUS (SZ)/ASRA/MUMBAI DATED 26.06.2018 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 Abdul Kuthoos

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal C. Cus-I No.  
251/2016 dated 28.06.2016 passed by the Commissioner of  
Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Abdul Kuthoos (herein referred to as Applicant) against the order 251/2016 dated 28.06.2016 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 Anna International Airport on 21.11.2015 as he was walking towards the exit. Examination of his person resulted in recovery of a three gold chains concealed in his under wear totally weighing 299.5 grams valued at Rs. 7,69,715/- (Rupees Seven Lakhs Sixty nine thousand Seven hundred and Fifteen).

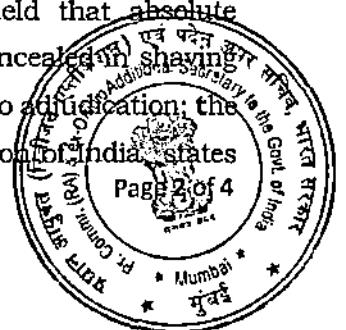
3. The Original Adjudicating Authority, vide order No. 512/2016-17-AIRPORT dated 21.03.2016 absolutely confiscated the gold mentioned above under section 111( d) & (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. A Personal penalty of Rs. 75,000/- 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, vide his order No. 251/2016 dated 28.06.2016 Commissioner (Appeals) rejected the Appeal.

5. Aggrieved with the above order the Applicant has filed this revision application interalia 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; Gold is not a prohibited item and as per the liberalized policy gold can be released on redemption fine and baggage duty; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; There are no specific allegation that the Applicants tried to cross the Green Channel; The Adjudication Authority has not exercised the option available under section 125 of the Customs Act, 1962; The gold was purchased from his savings, and The ownership of the gold is not disputed; At the Red channel she declared the gold and expressed willingness to pay duty, however it was not accepted and the officers registered a case; He is an eligible passenger for concessional duty, as he fulfills all the conditions.

5.2 The Applicant further pleaded that as per 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; 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 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 facts of the case. The goods were not declared by the passenger as required under Section 77 of the Customs Act, 1962. The Applicant has claimed that he is eligible for concessional rate of duty, however the benefit would have been extended if he had declared the goods. Under the circumstances confiscation of the goods is justified.

8. However, the Applicant had not yet crossed the Green Channel. There was no concerted attempt at smuggling these goods into India. The Applicant is not a frequent traveler and does not have any previous offences registered against her. Government, also observes that there is no allegation of ingenious concealment. Further, The CBEC Circular 09/2001 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. The order of absolute confiscation of the gold in the impugned Order in Appeal therefore 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 299.5 grams valued at Rs.



7,69,715/- ( Rupees Seven Lakhs Sixty nine thousand Seven hundred and Fifteen) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 3,00,000/- (Rupees Three lakhs) 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. 75,000/- (Rupees Seventy Five thousand ) to Rs. 60,000/- ( Rupees Sixty thousand) under section 112(a) of the Customs Act,1962.

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

12. So, ordered.

*Ashok Kumar Mehta*  
26/6/18

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

ORDER No. <sup>458</sup> /2018-CUS (SZ) /ASRA/MUMBAI.

DATED 26.06.2018

To,

Shri Abdul Kuthoos  
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**

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

