



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. 373/25/B/17-RA

Date of Issue 20/07/2018

ORDER NO. 464/2018-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 M. V. Subramani  
Respondent : Commissioner of Central Excise & Customs, Madurai.  
Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
073/2015 dated 08.12.2015 passed by the Commissioner of  
Central Excise (Appeals-I) Madurai.



ORDER

This revision application has been filed by Shri M. V. Subramani (herein after referred to as the Applicant) against the order no C. Cus No. 073/2015 dated 08.12.2015 passed by the Commissioner of Central Excise (Appeals-I) Madurai.

2. Briefly stated the facts of the case is that the applicant arrived at the Madurai Airport on 22.09.2014. Examination of his person resulted in the recovery of two gold bars kept in his shoulder bag totally weighing 607 gms valued at Rs. 17,76,689/- (Rupees Seveteen lakhs Seventy Six thousand Six hundred and Eighty Nine).

3. The Original Adjudicating Authority vide Order-In-Original No. MAD-CUS-000-JTC-01-2015 dated 30.03.2015 ordered 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. 1,70,000/- 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. 073/2015 dated 08.12.2015 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 Applicant had gone to Singapore to collect an outstanding amount payable to him and the debtor had given him the two gold bars instead of the debt amount of Twenty Lakhs; The Applicant did not have any intention to smuggle the gold; and was not aware that it he has to pay Customs duty on the same; The Applicant avers that he had invested Rs. 70,00,000/- in M/s UNIPAY2U, wherein the two gold bars were a part payment; to prove his bonafides he has produced all the documents ie Agreement, FIR lodged in the case at RT Nagar police station, Bengaluru, Complaint before Malaysian police etc.; That he does not have any source of income; his daughters marriage has been postponed twice due to the lack of finance and it may be repeated if he does not get relief.

5.3 The Revision Applicant pleaded that his entire savings were wiped off by the fraud committed by M/s UNIPAY2U and prayed for leniency in the case and requested for release of the gold for minimum redemption fine and personal penalty.



6. A personal hearing in the case was held on 19.04.2018. At first the Advocate for the respondent Shri Palanikumar pleaded that the delay in filing the Revision Application may please be condoned, as the Applicant had erroneously filed an application before the Hon' CESTAT, South Zone Bench, Chennai, the Hon'ble CESTAT vide its order dated 14.12.2016 held that it was a baggage case, and hence dismissed the case as non-maintainable. The advocate pleaded for condonation of delay as it may lead to a irreparable loss to the Applicant. The Advocate further re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed and requested for re-export of the gold on payment of redemption fine and penalty. Nobody from the department attended the personal hearing.

7. The Government has gone through the facts of the case. The Applicant had erroneously filed an application before the Hon' CESTAT, South Zone Bench, Chennai and therefore in the interest of justice, delay in filing the Appeal is condoned and revision application is decided on merits. 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 not intercepted while trying to exit the Green Channel. The ownership of the gold is not disputed. Government, also observes that the gold was kept in his hand baggage and there was no ingenious concealment. The Applicant is a frequent traveler, however there are genuine grounds for the travel and there are no previous offences registered against him. There was no concerted attempt at smuggling these goods into India. Further, The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is 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.

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 on redemption fine and reduced personal penalty and the Government is inclined to accept the plea. The absolute confiscation in impugned Order in Appeal therefore needs to be modified and the confiscated goods should be allowed for re-export on redemption fine and penalty.



10. In view of the above, Government allows redemption of the confiscated gold bits for re-export in lieu of fine. The gold bits weighing 607 gms valued at Rs. 17,76,689/- (Rupees Seventeen lakhs Seventy Six thousand Six hundred and Eighty Nine) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 6,00,000/- (Rupees Six 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. 1,70,000/- (Rupees One lakh Seventy thousand ) to Rs. 1,20,000/- ( Rupees One lakh Twenty 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.

*(Signature)*  
26/6/18

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

ORDER No. <sup>464</sup>/2018-CUS (SZ) /ASRA/MUMBAI

DATED 26.06.2018

To,

Shri M. V. Subramani  
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. Commissioner of Central Excise & Customs, Madurai.
2. Commissioner of Central Excise (Appeals-I) Madurai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

*(Signature)*  
26/6/18  
**SANKARSAN MUNDA**  
Asst. Commissioner of Customs & C. Ex.

