



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

F.No. 380/25/B/16-RA / 1161

Date of Issue 01/08/2018

ORDER NO. 538 /2018-CUS (SZ)/ASRA/MUMBAI DATED 23 .07.2018 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 : Commissioner of Customs, Chennai.
Respondent : Iqbal Adukkathil
Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus No. 617/2015 dated 30.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by The Commissioner of Customs, Chennai. (herein referred to as Applicant) against the order 617/2015 dated 30.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

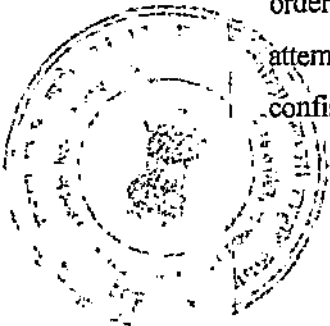
2. Briefly stated facts of the case are that the Officers of Customs intercepted the applicant, at the Chennai International Airport on 26.01.2015 while passing through the green channel. Examination of his person resulted in recovery of four gold bits totally weighing 466 grams valued at Rs. 13,25,770/- (Rupees Thirteen lakhs Twenty Five thousand Seven hundred and Seventy) from his pant pockets.

3. The Original Adjudicating Authority, vide order No. 49/2015-16-AIR dated 28.04.2015 confiscated the gold mentioned above under section 111(d),(l) & (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. But allowed redemption of the gold on payment of Rs. 4,50,000/- A Personal penalty of Rs. 1,00,000/- 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, Commissioner of Customs (Appeals) Chennai, vide his order No. 617/2015 dated 30.09.2015, dismissed the appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 Both the Order in original and the Order of the Commissioner (Appeals) is neither legal nor proper; the respondent had tried to smuggle the gold by concealing it in his pant pockets; The Respondent has contravened the section 77 and 11 of the Customs Act, 1962 and therefore the gold is liable for absolute confiscation; The respondent has stayed abroad only for two days and did not have foreign currency for payment of customs duty and hence ineligible to import gold under Notification No. 12/2012 and Baggage rules; In this case the Respondent has not filed any declaration and hence the order to allow re-export is not in order; The Appellate order upholding re-export is also erroneous; Gold is a restricted item and if attempted to be smuggled it becomes prohibited and therefore ^{showing} confiscated absolutely.



5.2 The Revision Applicant prayed for setting aside the order of the the Appellate authority or such an order as deemed fit.

6. In view of the above, the Respondent was called upon to show cause as to why the order in Appeal should be annulled or modified as deemed fit, and accordingly a personal hearing in the case was held on 06.07.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. In his written reply he interalia submitted that

6.2 The Applicant had purchased the gold from his own earnings; the gold was not concealed but kept in his pant pocket; The respondent was intercepted in the aircraft itself and the gold was retrieved in the aircraft; No opportunity was given to declare the impugned gold; He was all long under the control of the officers at the red channel and did not pass through the green channel; The CCTV video record may be perused to ascertain the facts; The ownership of the gold is not disputed; The redemption fine and penalty has already been paid and the gold has also been exported; 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. Thus, mere non-submission of the declaration cannot be held against the Applicant.

6.2 The respondent cited case laws in support of his case and prayed that the Revision application may be dismissed and render justice.

7. The Government has gone through the case records it is observed that the respondent did not cross the green channel and was intercepted before he attempted the same. The ownership of the gold is not disputed. There is no allegation of indigenous concealment. Absolute confiscation merely because of non-declaration is a harsh option in such circumstances, and unjustifiable. 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. Under the circumstances, the Original adjudication authority has rightly extended the option of redemption of the gold for re-export on payment of redemption fine and penalty. The Order-in-Appeal has also rightly upheld the order.



9. In conclusion, the Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order 617/2015 dated 30.09.2015 passed by the Commissioner of Customs (Appeals-I), Chennai, is upheld as legal and proper.

10. Revision application is accordingly dismissed.

11. So, ordered.

(Signature)
23.07.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. ⁵³⁸/2018-CUS (SZ)/ASRA/MUMBAI DATED 23.07.2018

To,

1. The Commissioner of Customs,
Custom House,
Rajaji Salai,
Chennai.
2. Shri Iqbal Adukkathil
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 (Appeals), Chennai
2. Sr. P.S. to AS (RA), Mumbai.
- ~~3. Guard File.~~
4. Spare Copy.

ATTESTED

(Signature)
23/7/18

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

