

373/69/B/17-RA

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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/69/B/17-RA

Date of Issue 02/08/2018

ORDER NO. 544/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 24.07.2018 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 : Shri Nizamuddeen Abdul Rahiman

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal C. Cus No. 42/2017  
dated 10.03.2017 passed by the Commissioner of Customs (Appeals)  
Chennai.



ORDER

This revision application has been filed by Shri Nizamuddeen Abdul Rahiman (herein after referred to as the Applicant) against the order no C. Cus No. 42/2017 dated 10.03.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, arrived at the Chennai Airport on 05.08.2015. He was intercepted by the officers and on repeated enquiry revealed that he had kept gold bars in the rear pocket of the seat of the aircraft. The officers rummaged the aircraft and recovered 2 mobile pouches containing 20 gold bars totally weighing 2330 grams valued at Rs. 58,38,980/- (Rupees Fifty eight lakhs Thirty eight thousand Nine hundred and eighty). The gold was concealed and kept in the Aircraft to be picked up by another person.

3. The Original Adjudicating Authority vide Order-In-Original No. 135 /19.11.2016 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. 5,00,000/- under Section 112 (a) of the Customs Act. A further penalty of Rs. 1,00,000/- was also imposed under Section 114AA of the Customs Act,1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C.Cus No. 42/2017 dated 10.03.2017 set aside the penalty of Rs. 1,00,000/- imposed under section 114AA of the Customs Act,1962 and upheld the rest of order in original.

5. The applicant has filed this Revision Application inter alia on the following grounds that;

5.1 The order of the appellate authority is bad in law, weight of evidence and probabilities of the case; that gold was not a prohibited item and as per liberalized policy can be released on fine and penalty; The Appellate Authority has not applied his mind and glossed over the judgments and points raised in the Appeal grounds; Ownership of the gold is not a criterion for import and even otherwise the gold receipts were in the name of the Applicant; The adjudicating authority failed to appreciate that there is a difference between complete prohibition and restricted category; The adjudicating authority has not exercised the option available under section 125 of the Customs Act,1962; The applicant was all along at the red channel and made no attempts to pass through the green channel; The Applicant was intercepted in the aircraft itself, and registered a case the applicant thus lost the opportunity to declare the gold; That the department one way states that the he has not declared the gold and on the other questions the applicants



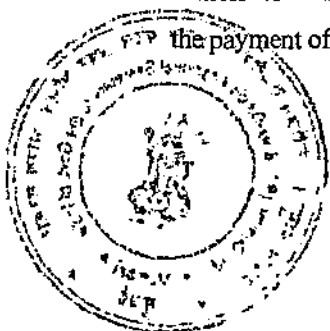
ownership of the gold, both the stands are contrary as only the owner can file a declaration.

5.2 The Applicant further pleaded that 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 case of Peringatil Hamza vs Commissioner of Customs , Mumbai 2014 (309) E.L.T. 259( Tri- Mumbai in the seizure of Rs. 24 lakhs of currency the redemption fine of 10% and penalty of Rupees 2 lakhs was found appropriate.

5.3 The Revision Applicant prayed that the Hon'ble Revision Authority may be pleased to set aside both the lower authorities orders and permit him to re-export the gold OR release the same on concessional rate of duty.aside penalty of Rs. 26,000/- and order for re-export of the gold and thereby 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 cited the decisions of GOI/Tribunals where redemption fine and personal penalty was reduced and requested for the same. Nobody from the department attended the personal hearing.

7. The Government has gone through the case records it is observed that the Applicant had concealed gold bar in the rear pocket of the seat of the aircraft so as to enable another person to retrieve the gold. This appears to be a well framed strategy evolved by a group of smugglers to avoid detection and so as to avoid detection and evade Customs duty and smuggle the gold into India. The aspect of allowing the gold for re-export can be considered when imports have been made in a legal manner. This is not a simple case of mis-declaration. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs Act, 1962. The said offence was committed in a premeditated and clever manner and clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted the gold would have been brought to the country avoiding the payment of customs duty.



8. The above acts have therefore rendered the Applicant liable for penal action under section 112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority.

9. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus. No. 42/2017 dated 10.03.2017 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

10. Revision Application is dismissed.

11. So, ordered.

*(Handwritten Signature)*  
24.7.18

(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

ORDER No. <sup>544</sup> /2018-CUS (SZ) /ASRA/MUMBAI. DATED 24.07.2018.

To,

Shri Nizamuddeen Abdul Rahiman  
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, Anna International 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**

*(Handwritten Signature)*  
24/7/18

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

