



सत्यमेव जयते

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. 373/20/B/17-RA

Date of Issue 02/08/2018

ORDER NO. <sup>545</sup>72018-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. Mir Hyder Abbas

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. Cus No. 5/2017 dated 03.01.2017 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri. Mir Hyder Abbas (herein referred to as Applicant) against the order C.Cus no. 5/2017 dated 03.01.2017 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, was intercepted at the Chennai International Airport on 12.09.2015. Examination of his person resulted in the recovery of two mobile pouches containing two one kilo gold bars and two gold bits each and another polythene bag recovered from his pant pockets resulted in a gold bit totally weighing 2103 grams valued at Rs. 55,24,581/- (Rupees Fifty five lakhs Twenty four thousand Five hundred and Eighty one ). The gold was recovered from mobile pouches and a polythene cover kept in his pant pockets.

3. The original Adjudication Authority vide order no. 87/31.08.2016 absolutely confiscated the impugned gold. A penalty of Rs. 5,50,000/- was also imposed on the Applicant under section 112 of the Customs Act, 1962.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai, Commissioner of Customs (Appeals), vide his order No. 5/2017 dated 03.01.2017, rejected the Appeal of the Applicant.

4. Aggrieved with the above order the Applicant has filed this revision application inter alia on the grounds that;

4.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; Gold is a restricted item and not a prohibited item and according to liberalized policy the gold can be released on redemption fine and penalty; The Adjudication Authority has simply glossed over the judgments and points raised in the Appeal grounds; 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 intercepted in the aircraft itself, when customs officers enquired the Applicant replied that he had brought gold to which the officers took him to the arrival hall and registered a case as if he was walking through the green channel, the CCTV video footage will ascertain the true facts; Thus the applicant lost the opportunity to declare the gold; The applicant was all along at the red channel and made no attempts to pass through the green channel; 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; however the general principle is that the person from whom goods are recovered is the owner.



4.2 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 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 and option to allow redemption is mandatory; In 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.

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of his case and prayed for release of the impugned currency on the redemption fine and reduce the personal penalty and thus render justice.

5. 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.

6. The Government has gone through the facts of the case. A written declaration of seized gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and had he not been intercepted he would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, Government also observes that the ownership of the gold is not disputed. The gold was kept in mobile pouches in his pant pockets and it was not ingeniously concealed. There is no reference of any previous offence. The applicant claims to have been intercepted in the aircraft itself thus losing the opportunity to declare the gold. Under the circumstances the absolute confiscation of the gold appears to be a harsh option. 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.

8. 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, Government is of the opinion that a lenient view can be taken.



*[Handwritten signature]*

in the matter. The Applicant has pleaded for re-export of the gold 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 gold is liable to be allowed for re-export on payment of redemption fine and penalty.

9. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold totally weighing 2103 grams valued at Rs. 55,24,581/- (Rupees Fifty five lakhs Twenty four thousand Five hundred and Eighty one) is ordered to be redeemed for re-export on payment of redemption fine of Rs.25,00,000/- (Rupees Twenty Five 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. 5,50,000/- (Rupees Five lakhs Fifty thousand ) to Rs. 5,00,000/- (Rupees Five lakhs ) under section 112(a) of the Customs Act,1962.

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

11. So, ordered.

*Ashok Kumar Mehta*  
24/7/18

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

ORDER No. <sup>545</sup> /2018-CUS (SZ) /ASRA/MUMBAI DATED 24.07.2018

To,

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Copy to:

1. The Commissioner of Customs, Thiruvananthapuram
2. The Commissioner of Cus. & C. Ex. (Appeals), Cochin
3. Sr. P.S. to AS (RA), Mumbai.
4.  Guard File.
5. Spare Copy.

**ATTESTED**

*Sankarsan Munda*  
21/8/18

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

