

REGISTERED  
SPEED POST

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. 373/68/B/15-RA

Date of Issue 10/08/2018

ORDER NO. <sup>563</sup>2018-CUS (SZ) / ASRA / MUMBAI/ DATED 30.07.2018  
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 Barikkad Haneefa

Respondent: Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. C.  
Cus-I No. 150/2014 dated 18.12.2014 passed by the  
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Barikkad Haneefa (herein referred to as Applicant) against the order in appeal C. Cus I no. 150/2014 dated 18.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 05.06.2014. He was intercepted at the green channel and examination of his baggage and person resulted in the recovery of gold ten mercury coated white coloured flexible gold rods totally weighing 470 gms valued at Rs. 12,88,270/- ( Rupees Twelve lakhs Eighty eight thousand Two hundred and Seventy ). The gold was indigenously concealed in the spring which was neatly stiched in the beading portion of a zipper bag.

3. After due process of the law vide Order-In-Original No. 731/2014-AIU dated 16.07.2014 the Original Adjudicating Authority ordered absolute confiscation of the impugned gold under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act, and imposed penalty of Rs. 1,25,000/- (Rupees one lakh Twenty Five thousand) under Section 112 (a) of the Customs Act,1962. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. Cus-I No. 150/2014 dated 18.12.2014 rejected the appeal of the applicant.

4. The Revision Application has been filed interalia on the following grounds that

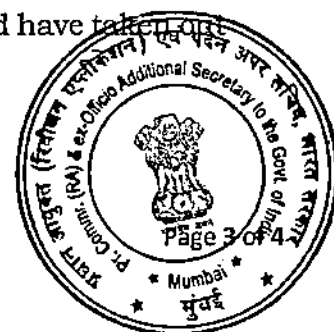
4.1 The order of the authorities is against the law and weight of evidence and probabilities of the case; Section 110(2) of the Customs Act,1962 mandate that once the goods are seized under section 110(1); the show cause notice has to be issued within six months failing which the goods must be returned; In the instant case no notice was given to the Applicant; Section 110 (2) read with 124 of the Customs Act,1962 is very rigid and therefore there is no scope left with the authorities to proceed with the order of confiscation; Therefore as no show cause notice oral or written was issued the Commissioner (appeals ) had no choice but to order the return of goods.



4.2 In view of the above the Revision Applicant requested for setting aside the order and order for unconditional release of the gold, and thereafter direct the adjudicating authority to issue a show cause notice and adjudicate the matter after giving an opportunity for hearing to the Applicant.

5. A personal hearing in the case was scheduled to be held on 24.07.2018, the Advocate for the respondent Shri B. J. Raichandani attended the hearing, he re-iterated the submissions filed in Revision Application and prayed for a lenient view to be taken in the matter. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. The Order of the Commissioner (Appeals ) has suitably addressed the contentions of the Applicant with regard to the issuance of Show cause notice, required to be issued within the time limit and the passing of the adjudication order by the Original adjudicating authority. The Government therefore does feel the need to dwell into this aspect further and therefore the case is being decided on merits. A written declaration of 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. Government observes that the Applicant had indigenously concealed in the gold in a spring which was neatly stiched in the beading portion of a zipper bag, so as to avoid detection and evade Customs duty and smuggle the gold into India. This is not a simple case of mis-declaration, but a case of ingenious concealment. In this case the Applicant has blatantly tried to smuggle the gold into India in contravention of the provisions of the Customs, 1962. The release on concessional rate of duty also cannot be entertained as the Applicant has not declared the gold as required under Section 77 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 before the exit, the Applicant would have taken out the gold pieces without payment of customs duty.



7. 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.

8. The Government therefore finds no reason to interfere with the Order-in-Appeal. The Appellate order C. Cus-I No. 150/2014 dated 18.12.2014 passed by the Commissioner of Customs (Appeals), is upheld as legal and proper.

9. Revision Application is dismissed.

10. So, ordered.

*Ashok Kumar Mehta*  
30/7/18

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

ORDER No. <sup>563</sup>/2018-CUS (SZ) /ASRA/MUMBAI. DATED 30.07.2018

To,

Shri Barikkad Haneefa  
c/o Shri B. J. Raichandani  
Advocate.  
59, Swastik Plaza, V. M Road,  
J.V.P.D. Scheme, Vile Parle (W),  
Mumbai 400 049.

**ATTESTED**

*Sankarsan Munda*  
12/8/18

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

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.

