

REGISTERED
SPEED POST

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

F.No. 373/95/B/16-RA/2018

Date of Issue 13/08/2018

ORDER NO. 598/2018-CUS (SZ)/ASRA/MUMBAI DATED 03.07.2018 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 Jamal Bashith

Respondent : Commissioner of Customs, Trichy.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. 38/2016 dated 08.03.2016 passed by the Commissioner of Customs & Central Excise (Appeals), Trichy.



ORDER

This revision application has been filed by Shri Jamal Bashith (herein after referred to as the Applicant) against the order no 38/2016 dated 08.03.2016 passed by the Commissioner of Customs (Appeals), Trichy.

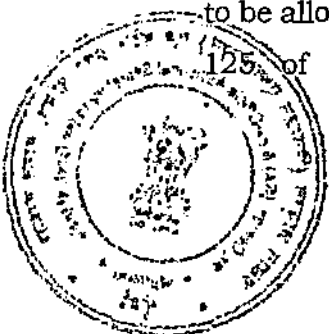
2. Briefly stated the facts of the case is that the applicant arrived at the Trichy International Airport on 30.03.2014. Examination of his person and baggage resulted in the recovery of two gold biscuits weighing 200 gms valued at Rs. 5,77,400/- (Rupees Five lakh Seventy seven thousand Four hundred) The gold biscuits were indigenously concealed in the disc drive of the CPU carried by him as baggage.

3. The Original Adjudicating Authority vide Order-In-Original No. 31/2015 dated 31.08.2015 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. 1,00,000/- 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. 38/2016 dated 08.03.2016 rejected the appeal of the applicant.

5. The applicant has filed this Revision Application interalia on the following grounds that

4.1 The impugned order passed by the Commissioner (Appeals) has not properly appreciated the grounds of Appeal; The order of the authorities has been passed without considering any of the submissions of the Applicant and is therefore non speaking order; The Applicant was told that gold was free for import; The specific issue is whether goods held to be prohibited can be granted redemption on payment of fine; The original adjudicating authority has taken it for granted that section 123 applies to gold and has erred in invoking section 123(3) of the Customs Act,1962; There are judgements galore which state that the gold imported in violation of conditions cannot be absolutely confiscated are to be allowed redemption on payment of fine, it is mandatory under the section 125 of the Customs Act,1962; absolute confiscation of the



unreasonable, unjustified and arbitrary, option to redeem is always extended when there is a violation of the prescribed conditions.

4.2 The Revision Applicant cited various other cases in support of his case prayed that the Hon'ble Revision Authority may please set aside the order in Appeal and permit re-export of the gold in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 23.07.2018, the Advocate for the respondent Shri G. Derrick Sam attended the hearing, he re-iterated the submissions filed in Revision Application and pleaded for setting aside the order in appeal and allow the revision application.

6. The Government has gone through the case records it is observed that the gold biscuits were indigenously concealed in the disc drive of the CPU carried by him as baggage. The concealment was planned 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, 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 of Rs. 25,000/-. 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 38/2016 dated 08.03.2016 passed by the Commissioner of Customs & Central Excise (Appeals), Trichy is legal and proper.



9. Revision Application is dismissed.

10. So ordered.

(Signature)
2/7/18

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

ORDER No. 598/2018-CUS (SZ) /ASRA/MUMBAI.

DATED 03.07.2018

To,

Shri Jamal Bashith
c/o Shri G. Derrick Sam
17, First Cross Street,
Fourth Avenue,
Besant Nagar,
Chennai - 600 090.

Copy to:

1. The Commissioner of Customs, Anna International Airport, Trichy
2. The Commissioner of Customs & Central Excise (Appeals), Trichy.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

ATTESTED

(Signature)
17/8/18

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

