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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. 373/28-32/B/17-RA

Date of Issue 18/08/2018

ORDER NO. <sup>599-603</sup> /2018-CUS (SZ) / ASRA / MUMBAI/ DATED 18.07.2018 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 Abdul Kareem Mohammed Kasim  
Shri Mohamed Gajini Kader Gani  
Shri Ravipandian Soundra Pandian  
Shri Abdulla Kader Gani  
Smt. Rozina Nasruddin

Respondent : Commissioner of Customs (Airport), Bangalore.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal Nos. 715-  
719/2016 dated 26.12.2016 passed by the Commissioner of  
Customs (Appeals) Bangalore.



ORDER

This revision application has been filed by Shri Abdul Kareem Mohammed Kasim, Shri Mohamed Gajini Kader Gani, Shri Ravipandian Soundra Pandian, Shri Abdulla Kader Gani, Smt. Rozina Nasruddin against the order no C.Cus I No. 715-719/2016 dated 26.12.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the applicants, had arrived at the Bangalore Airport on 31.03.2015. They were intercepted by the DRI officers at the exit point of the green channel. Examination of the person resulted in recovery of assorted gold articles as detailed below;

S. No.	Name of the passenger	Description of the recovered gold	Place from where the gold was recovered	Weight of the gold	Value in Rs.
1	Abdul Kareem Mohammed Kasim	One gold chain, one silver coated gold buckle, two gold pieces	Pant pocket and the gold buckle was on the belt of the pant worn by him.	411.55	10,90,608/-
2	Mohamed Gajini Kader Gani	Three gold chains and two gold pieces	In the pocket of pant worn, and backpack.	294.01	7,79,126/-
3	Ravipandian Soundra Pandian	Two gold chains and three gold pieces	Backpack	357.66	9,47,799/-
4	Abdulla Kader Gani	Six gold pieces	In the pocket of pant worn	281.81	7,46,796/-
5	Rozina Nasruddin	One gold chain and Two silver coated gold bangles, two gold toe rings and two anklets	Worn on her person	568.90	15,07,585/-

The original Adjudicating Authority vide his order in original 607/2015-16 dated 22.02.2016 absolutely confiscated the gold for all the applicants above under section 111 (d), (l) and (m) of the Customs Act, 1962 and penalties were imposed under Section 112 (a) and Section 114AA of the Customs Act, 1962 as detailed below.



S. No.	Name of the passenger	Penalty imposed under Section 112 (a) in Rs.	Penalty imposed under Section 114AA in Rs.
1	Abdul Kareem Mohammed Kasim	3,00,000/-	2,00,000/-
2	Mohamed Gajini Kader Gani	2,30,000/-	1,50,000/-
3	Ravipandian Soundra Pandian	2,75,000/-	1,80,000/-
4	Abdulla Kader Gani	2,20,000/-	1,50,000/-
5	Rozina Nasruddin	4,40,000/-	2,90,000/-

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Bangalore. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal No. 715-719/2016 dated 26.12.2016, the rejected the Appeal filed by Shri Abdulla Kader Gani as hit by the bar of limitation as under section 128 of the Customs Act,1962 and rejected the rest of the Appeals as not sustainable on merits.

4. The applicants Shri Abdul Kareem Mohammed Kasim, Mohamed Gajini Kader Gani and Ravipandian Soundra Pandian have filed this Revision Application interalia on the following grounds that;

4.1 The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case; The applicants submit that the seized gold was worn by the applicants for several months and was used gold; The Appellate authority has simply glossed over the judgments and points raised in the appeal grounds and rejected the Appeal; The statement given before the DRI officers have been retracted; The applicants were carrying the gold in their pant pockets and also wearing part of the gold which can be seen through the naked eye and they showed it to the officers when intercepted having seen the gold the question of declaration does not arise; The Applicant denies that he had entered into a conspiracy with the other applicants and the gold was for his own use; The Applicants aver that they were intercepted in the aircraft itself and then taken to the arrival hall, where the officers registered a case as if they were intercepted at the green channel; The officers therefore denied the opportunity to declare the gold to the Applicants and the act of seizing the gold is premature; The Applicants have not made any false declaration, and nor have they filed any false documents and therefore do not attract penalty under section 114AA; No relied upon documents were supplied to the Applicants which is a clear violation of natural justice; He was all along under the control of the officers at the red channel and had not even attempted to pass through the green Channel, the CCTV records may please be called for to ascertain the real facts in the matter; Even assuming without



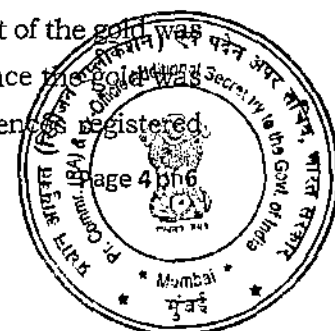
admitting that the that the applicant had not declared the gold, the attempt was to evade duty of 36.05% ie and this should have been the primary point to determine the penalty imposed; The personal penalty of almost 50% is very high and unreasonable; there is an option is available under section 125 of the Customs Act,1962, which has not been exercised;

- 4.2 In addition to the above grounds Shri Abdulla Kader Gani submitted that he had filed an affidavit for condoning the delay, as he had gone to his native place and had misplaced the Order in original; Further the Order in original was received by him on 26.04.2016 and they had posted the appeal on 21.07.2016 and it was received by the Appellate authority on the next day ie. 22.07.2016.
- 4.3 In addition to the grounds raised in above in para 4.1 the Applicant Smt. Rozina Nasruddin submitted that the gold ornaments worn by her were of Indian origin, but there are no reference to this and other facts raised by her in the Appeal; There was no ingenious concealment as alleged, the thalli chain was worn as were the two metties (a symbol for married women) and two anklets were worn on the ankles; She was wearing anklets that can be removed or attached onlty with hooks; however in the seized photos provided by the DRI the hooks are missing; These hooks clearly indicated the Indian origin of the gold.
- 4.4 The Revision Applicants cited various assorted judgments and boards policies in support of his case and prayed that the Hon'ble Revisionary Authority set aside the Order in Appeal and allow re-export of the gold on payment of redemption fine and 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 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.

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 if they were not intercepted they would have gone without paying the requisite duty, under the circumstances confiscation of the gold is justified.

7. However, in the case of Shri Abdul Kareem Mohammed Kasim, Shri Mohamed Gajini Kader Gani, Shri Ravipandian Soundra Pandian and Smt. Rozina Nasruddin Government observes that the ownership of the gold is not disputed. Most of the gold was worn by the Applicant and some was carried in their backpacks and hence the gold was not ingeniously concealed. The Applicants do not have any previous offences registered.



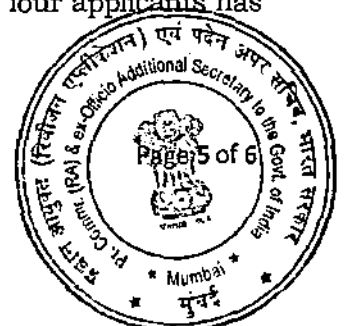
against them. The import of gold is restricted and not prohibited. The CBEC Circular 09/2001 gives specific directions to the Customs officer in case the declaration form is incomplete/not filled up, the proper Customs officer should help the passenger record to the oral declaration on the Disembarkation 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.

7.1. 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 in the matter. The Applicants have 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. Government also holds that no penalty is imposable under section 114AA of the Customs Act, 1962 as this provision is not attracted in baggage cases.

7.2. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. Government also observes that the facts of the case justify reduction in the penalty imposed. The details of the redemption fine and penalty imposed is as detailed below.

S. No.	Name of the passenger	Weight of the gold	Value in Rs.	Redemption fine	Penalty imposed	Penalty imposed is reduced to
1	Abdul Kareem Mohammed Kasim	411.55	10,90,608/-	5,00,000/-	3,00,000/-	1,25,000/-
2	Mohamed Gajini Kader Gani	294.01	7,79,126/-	3,00,000/-	2,30,000/-	75,000/-
3	Ravipandian Soundra Pandian	357.66	9,47,799/-	4,00,000/-	2,75,000/-	1,00,000/-
4	Rozina Nasruddin	568.90	15,07,585/-	6,00,000/-	4,40,000/-	1,50,000/-

8. The penalties imposed under section 114AA on all the above four applicants has been incorrectly imposed, the penalty is therefore set aside.



9. The Government finds no reason to interfere with the Order-in-Appeal in respect of Shri Abdulla Kader Gani. The Appellate order C. Cus. No. 715-719/2016 dated 26.12.2016 passed by the Commissioner of Customs (Appeals), with respect to Shri Abdulla Kader Gani is upheld as legal and proper.

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

11. So, ordered.

*(Handwritten Signature)*  
15/07/18

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

ORDER No. <sup>599-603</sup> /2018-CUS (SZ) /ASRA/Mumbai

DATED 18-07-2018

To,

Shri Abdul Kareem Mohammed Kasim  
Shri Mohamed Gajini Kader Gani  
Shri Ravipandian Soundra Pandian  
Shri Abdulla Kader Gani  
Smt. Rozina Nasruddin

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, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

**ATTESTED**

*(Handwritten Signature)*  
17/8/18

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

