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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/135/B/15-RA

Date of Issue 27/08/2018

ORDER NO. 627/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 14.08.2018 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 Shaik Alavudeen

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. 118/2014 dated 12.12.2014 passed by the
Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri Shaik Alavudeen (herein referred to as Applicant) against the Order in Appeal C. Cus No. 118/2014 dated 12.12.2014 passed by the Commissioner of Customs (Appeals), Chennai.

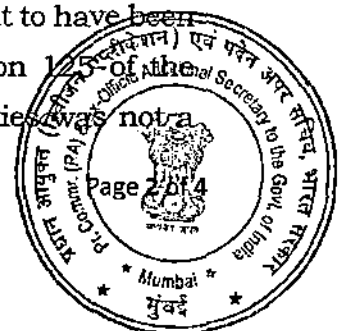
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 12.09.2014. He was intercepted and examination of his person resulted in the recovery of three gold coins totally weighing 103 gms valued at Rs. 2,63,886/- (Rupees Two lakhs Sixty three thousand Eight hundred and Eighty Six).

3. After due process of the law vide Order-In-Original No. 1145/2014 -Batch A dated 12.09.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) and e, (l), (m) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 30,000/- under Section 112 (a) 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. 118/2014 dated 12.12.2014 reduced the personal penalty to Rs. 15,000/- and modified the order in original.

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

4.1 The order of the authorities is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to legal principles; The Appellate authority has erred in contending that the applicant did not declare the goods on his arrival under section 77 of the Customs Act,1962; The Applicant has brought gold coins gifted to him for his daughters marriage; The gold coins were not carried for someone else; The gold coins were kept in the Applicants handbag; the customs authorities are allowing clearance of gold in reasonable quantities on payment of fine and penalty; the import of gold is restricted but not prohibited therefore it should have been allowed on redemption fine and penalty; The Applicant not concealed the gold as it was kept in his hand baggage; The option to redeem the gold ought to have been given to the Applicant as it is mandatory under the section 125 of the Customs Act,1962; The gold brought in reasonable quantities was not a



prohibited item; There are a plethora of decisions permitting clearance of gold on reduced fine and penalty; The quantum of penalty has to be proportionate to the role played by the individual.

4.2 The Revision Applicant cited case laws in his defense and prayed for release of the gold unconditionally by passing such orders as deem fit in the interest of justice.

5. A personal hearing in the case was scheduled to be held on 18.07.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed and requested 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. A written declaration of gold was not made by the Applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

7. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was carried by the Applicant in his handbag and it was not indigenously concealed. Import of gold is restricted not prohibited. The ownership of the gold is not disputed. 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. In view of the above facts, the Government is of the opinion that absolute confiscation of the gold is harsh and unjustified and therefore a lenient view can be taken in the matter. The Applicant has pleaded for redemption of the gold on fine and penalty and the Government



is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

9. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 103 gms valued at Rs. 2,63,886/- (Rupees Two lakhs Sixty three thousand Eight hundred and Eighty Six) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 1,10,000/- (Rupees One lakh ten thousand) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify the penalty imposed. The penalty of Rs. 15,000/- (Rupees Fifteen thousand) imposed on the Applicant under section 112(a) of the Customs Act,1962 is appropriate.

10. The impugned Order in Appeal is modified as detailed above. Revision application is partly allowed on above terms.

11. So, ordered.

(Handwritten Signature)
19/8/18

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

ORDER No. ⁶²⁷/2018-CUS (SZ) /ASRA/MUMBAI

DATED 14.08.2018

To,

Shri Shaik Alavudeen
c/o M/s L. K. Associates
"Time Tower" Room No. 5, II Floor,
169/84, Gengu Reddy Road,
Egmore, Chennai- 600 008.

ATTESTED

(Handwritten Signature)
27.8.18
S.R. HIRULKAR
Assistant Commissioner (R.A.)

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.

