

REGISTERED
SPEED POST

सत्यमेव जयते

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

F.No. 373/53/B/16-RA/1466

Date of Issue 06.09.2018

ORDER NO. 651/2018-CUS (SZ)/ASRA/MUMBAI DATED 30.08.2018 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 Shagul Hameed

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal C. Cus-
I No. 3/2016 dated 25.01.2016 passed by the
Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Shagul Hameed (herein after referred to as the Applicant) against the order in appeal No3/2016 dated 25.01.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

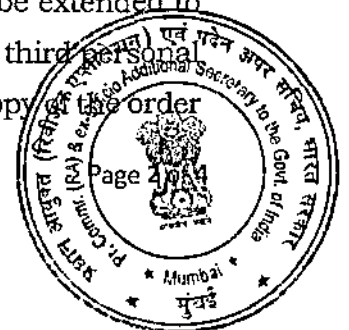
2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 05.08.2015. Examination of his person and baggage resulted in the recovery of four gold bars and one gold chain totally weighing 450 gms valued at Rs. 11,27,700/- (Rupees Eleven lakhs Twenty Seven thousand Seven hundred). The gold bars were tied to an adaptor and recovered from his checked in baggage and the gold chain from his hand bag.

3. The Original Adjudicating Authority vide Order-In-Original No. 337/2015-16 dated 12.11.2015 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. 2,50,000/- 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. 3/2016 dated 25.01.2016 rejected the appeal of the applicant.

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

5.1 The order of the appellate authority is unjust, unfair unreasonable biased and arbitrary; The Applicant had carried the gold for a third person to be cleared on payment of duty; Gold is not a prohibited item and the same is allowed on payment of duty, fine and penalty; The gold was tied to the adaptor and the gold chain was kept in the handbag and it was not concealed; The Applicant was totally under the control of the officers and not in a position to ventilate any grievances at the relevant time; There are a number of cases where gold has been released on payment on customs duty; Various appellate forums have repeatedly iterated that gold cannot be confiscated absolutely and an option for redemption has to be extended to the passenger under section 125 of the Customs Act, 1962; A third person hearing was not granted to the Applicant and neither was a copy of the order



of original given at the time therefore the principles of natural justice were not followed by the adjudicating authority; The quantum of penalty has to be proportionate to the role played by the individual especially as there is no charge of misdeclaration or concealment; The Applicant has strong grounds for considering redemption of the gold and pleaded that the Revisionary authority to allow the Appeal.

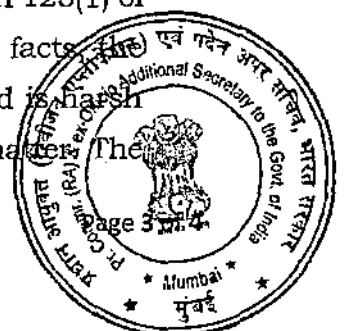
5.2 The Applicant submitted case laws in favor of his case and prayed for taking this memorandum of Appeal on record and consider releasement of the gold under section 125 of the Customs Act, 1962 and render justice.

6. A personal hearing in the case was scheduled to be held on 09.08.2018, the Advocate for the respondent Shri B. Kumar attended the hearing, he reiterated the submissions filed in Revision Application and pleaded for setting aside the order in appeal for re-export on reduced redemption fine and penalty.

7. The Government has gone through the case records. The gold was not declared under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified.

8. However, the facts of the case state that the Applicant had not cleared the Green Channel. The impugned gold was recovered from his baggage and hand bag, and it was carried by the Applicant in his pant pocket 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.

9. 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 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 set aside.

10. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 450 gms valued at Rs. 11,27,700/- (Rupees Eleven lakhs Twenty Seven thousand Seven hundred) is allowed to be redeemed for re-export on payment of redemption fine of Rs. 6,00,000/- (Rupees Six 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 2,50,000/- (Rupees Two lacs Fifty thousand) to Rs. 1,50,000/- (Rupees One lakh fifty thousand) under section 112(a) of the Customs Act,1962.

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

10. So ordered.

(Handwritten Signature)
30.8.18

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

ORDER No. ⁶⁵¹/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.06.2018

To,

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

ATTESTED

(Handwritten Signature)
10.9.18

S.R. HIRULKAR
Assistant Commissioner (R.A.)

Copy to:

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

