

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. 373/52/B/16-RA/1469

Date of Issue 06/09/2018

ORDER NO. ⁶⁵⁴/2018-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 Thangeswaran

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. 865/2015 dated 23.12.2015 passed by the
Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Thangeswaran (herein after referred to as the Applicant) against the order in appeal No. 865/2015 dated 23.12.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

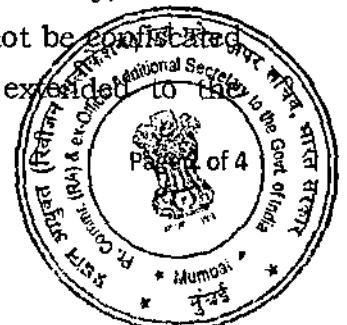
2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 17.08.2015. Examination of his person resulted in the recovery of two gold bits weighing 83 gms valued at Rs. 1,93,880/- (Rupees One Lakh Ninety Three thousand Eight hundred and eighty). The gold bits rods were recovered from his pant pockets.

3. The Original Adjudicating Authority vide Order-In-Original No. 840/2015 dated 17.08.2015 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. 20,000/- 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. 865/2015 dated 23.12.2015 rejected the appeal of the applicant on the grounds that there has been an non condonable delay of 33 days in filing the appeal.

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 Commissioner (Appeals) should have considered that during the relevant period Chennai was flooded due to torrential rains and the entire city was without electricity etc; The Applicant had purchased the gold for his personal use; The applicant did not opt for the green channel and also did not conceal the gold; Such a small quantity of gold cannot be for commercial purposes; The Applicant was intercepted at the metal detector and voluntarily accepted that the gold possession, and thus there was no intention for evading duty; 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 exercised.



passenger; The Applicant has strong grounds for considering redemption of the gold and pleaded that the Revisionary authority to allow the Appeal.

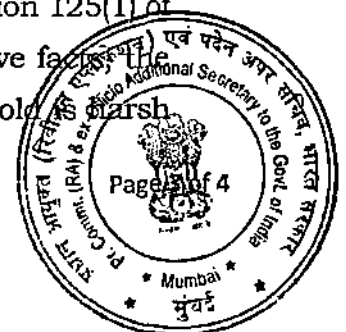
5.2 The Applicant submitted case laws in favor of his case and prayed for taking this memorandum of Appeal on record and pass such order as may be fit and proper in the facts and circumstances of the case.

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 on reduced redemption fine and penalty.

7. The Government has gone through the case records it is observed that the Applicant has informed that the delay in submission of the Appeal before the Commissioner (Appeals) occurred due to the flooding of Chennai city due to torrential rains. Government also observes that if the delay of 33 days is not condoned it will lead to a irreparable loss to the Applicant. In the interest of justice, the delay is condoned, and the revision application is being decided on merits.

8. The gold was not properly declared under section 77 of the Customs Act, 1962 and therefore confiscation of the gold is justified. 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 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 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 set aside.

10. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 83 gms valued at Rs. 1,93,880/- (Rupees One Lakh Ninety Three thousand Eight hundred and eighty is allowed to be redeemed for re-export on payment of redemption fine of Rs. 85,000/- (Rupees Eighty Five thousand) 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 20,000/- (Rupees Twenty thousand) to Rs 17,000/- (Rupees Seventeen 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.

Ashok Kumar Mehta
24/8/18

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

ORDER No. ⁶⁵⁴/2018-CUS (SZ) /ASRA/MUMBAI

DATED 30.08.2018

To,

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

ATTESTED

S.R. Hirulkar
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.

