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SPEED POST

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. 373/104/B/16-RA/22<sup>nd</sup>

Date of Issue 12.10.2018

ORDER NO. 677/2018-CUS (SZ)/ASRA/MUMBAI DATED 31.08.2018 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 Humayun Kabeer

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. 165/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Humayun Kabeer (herein after referred to as the Applicant) against the order in appeal No. 165/2016 dated 31.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

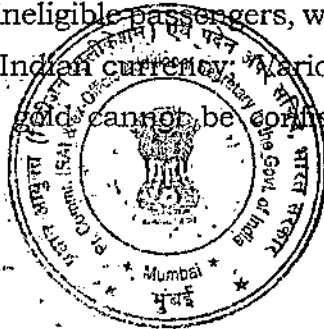
2. Briefly stated the facts of the case is that the applicant arrived at the Chennai International Airport on 20.01.2016. Examination of his baggage and person resulted in the recovery of one gold chain and one gold coin weighing 70 gms valued at Rs. 1,67,141/- ( Rupees One Lakh Sixty seven thousand One hundred and Forty one ). The gold was recovered from his personal effects from his checked in baggage.

3. The Original Adjudicating Authority vide Order-In-Original No. 81/20.01.2016 dated 20.01.2016 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. 17,000/- 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. 165/2016 dated 31.03.2016 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 and devoid of merits and unsustainable; The Applicant is a bonafide passenger and the gold was acquired out of his earnings; The gold cannot be construed as commercial goods; The Applicant had made a proper declaration but the facts were not brought out properly before the adjudication authority; Gold is not a prohibited item and goods should have been allowed for re-export and the provisions of section 125 should have been applied; The applicant places his reliance on various instances on which gold and gold ornaments were imported by ineligible passengers, where the gold was allowed on baggage rates and in Indian currency. 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; The gold brought by the Applicant is not prohibited and liable for redemption;

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 so as to direct the lower authority to release the gold on payment on fine and penalty 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 and allowing re-export on redemption fine and penalty.

7. The Government has gone through the case records. 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 recovered from his baggage 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 more a lenient view can be taken in the matter. The Applicant has pleaded for re-export of the gold on redemption 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 70 gms valued at Rs. 1,67,141/- ( Rupees One Lakh Sixty seven thousand One hundred and Forty one ) is allowed to be redeemed for re-export on payment of redemption fine of Rs.70,000/- ( Rupees Seventy 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 Rs. 17,000/- ( Rupees Seventeen thousand ) to Rs. 14,000/- ( Rupees Fourteen 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.

11. So ordered.

*(Signature)*  
31.6.18

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

ORDER No. 677/2018-CUS (SZ) /ASRA/MUMBAI

DATED 31.08.2018

To,

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

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.

**ATTESTED**

*(Signature)*  
12/11/18

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

