



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 373/94/B/2018-RA [20/09] .. Date of Issue 20.11.2018

ORDER NO. 93/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 18.09.2018 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 Ajmal Khan

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. 25/2018 dated 13.02.2018 passed by the Commissioner of Customs (Appeals), Chennai.

ORDER

This revision application has been filed by Shri Ajmal Khan (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 25/2018 dated 13.02.2018 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 05.04.2017. He was intercepted when proceeding towards the Green Channel and examination of his person resulted in the recovery of one whole gold bar and three gold cut bars totally weighing 1427 gms valued at Rs. 42,46,752/- (Rupees Forty two lakhs Forty six thousand Sven hundred and Fifty two). The gold was recovered concealed in a mobile case cover kept in the inner pant pocket of the Applicant.

3. After due process of the law vide Order-In-Original No. 158/2017-18-AIRPORT dated 16.11.2017 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. 4,50,000/- under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 50,000/- under Section 114AA of the Customs Act, 1962

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) application who vide Order-In-Appeal C. Cus No. 25/2018 dated 13.02.2018 set aside the penalty imposed under Section 114AA of the Customs Act, 1962 and rejected the Appeal of the Applicant.

5. The applicant has 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 Appellate authority has simply glossed over the judgements and the points raised in the appeal grounds and reason has been given to reject the Appeal; The Applicant was intercepted at the time of immigration itself, before even attempting to cross the Green Channel; As the gold has been seized from the possession of the Applicant he is entitled to claim the gold, further no attempt has been made by the department to find out the real owner; The representation made by the Applicant has not been considered; The departments contention that numerous chances were given to the Applicant to declare the gold under section 77 of the Customs Act, 1962 is not borne by any evidence; Gold is a restricted item and not prohibited

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goods; The adjudication authority has not exercised the option of section 125 77of the Customs Act, 1962; The Applicant further pleaded that as per the judgement by CEGAT South Zonal Bench , Chennai in the case of Shaikh Shahabuddin vs Commissioner of Customs Chennai has held that absolute confiscation without giving the option of redemption for gold concealed in shaving cream tubes is not proper, and the case was remanded for denovo adjudication; The Hon'ble High Court of Andhra Pradesh in the case of Sheikh Jamal Basha vs GOI 1997 (91) ELT 277 (AP) has stated held that under section 125 of the Act is Mandatory duty to give option to the person found guilty to pay fine in lieu of confiscation;

4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export of the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 25.09.2018, the Advocate for the respondent Shri Palanikumar attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that the revision application be decided on merits. Nobody from the department attended the personal hearing.

6. The Government has gone through the facts of the case. It is a fact that the gold was not declared 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 was intercepted before he even attempted to exit the Green Channel. The gold is claimed by the Applicant and there is no other claimant. The gold was kept in the mobile cover carried by the Applicant in his pant pocket and it was not ingeniously concealed. There are no previous offences registered against the Applicant. 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.

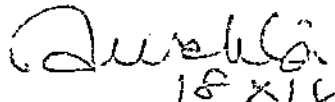
8. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The absolute confiscation of the gold is therefore harsh and unjustified. In view of the above facts, the Government is of the opinion that a lenient view can be taken in the matter. The Applicant has pleaded for re-export 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.

9. Taking into consideration the foregoing discussion, Government allows redemption of the confiscated gold for re-export in lieu of fine. The gold bars weighing 1427 gms valued at Rs. 42,46,752/- (Rupees Forty two lakhs Forty six thousand Sven hundred and Fifty two) is ordered to be redeemed for re-export on payment of redemption fine of Rs. 20,00,000/- (Rupees Twenty 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 Rs. 4,50,000/- (Rupees Four lakhs Fifty thousand) to Rs.4,00,000/- (Rupees Four Lakhs) under section 112(a) of the Customs Act,1962.

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

10. So, ordered.


18/09

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

ORDER No. 83/2018-CUS (SZ) /ASRA/

DATED 13-09.2018

To,

Shri Ajmal Khan
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai - 600 001.

Copy to:

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