



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. 373/114/B/2018-RA

Date of Issue 18.11.2018

ORDER NO. 826 /2018-CUS (WZ) / ASRA / MUMBAI/ DATED 22.10.2018 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 S. Mohamed Hussain

Respondent : Commissioner of Customs, Chennai

Subject :Revision Application filed, under Section 129DD of the Customs  
Act, 1962 against the Order-in-Appeal C.Cus-II No. 99 & 100/2018  
dated 26.03.2018 passed by the Commissioner of Customs (Appeals-I)  
Chennai.

ORDER

This revision application has been filed by Shri S. Mohamed Hussain ( herein after referred to as the "Applicant") against the order in Appeal C.Cus-II No. 99 & 100/2018 dated 26.03.2018 passed by the Commissioner of Customs (Appeals) Chennai.

2. Briefly stated facts of the case are that on specific intelligence received the Officers of the Directorate of Revenue Intelligence intercepted three persons, Shri A. Krishnan, Ms. K. Rajeshwari and Ms. R. Sarala Devi as they alighted at Chennai railway Station from the Howrah - Chennai Mail. Shri A. Krishnan on persistent interrogation admitted that they were carrying gold concealed in their suitcases. Examination of their baggage resulted in the recovery of 35 gold bars totally weighing 5810 grams valued at Rs. 1,76,56,590/- ( Rupees One crore Seventy six Lakhs Fifty six thousand Five hundred and Ninety)concealed in the cavities of the trolley suitcases carried by the passengers. The gold was having Burmese markings and was wrapped in Burmese newspapers. Interrogation of the passengers reveled that the gold and the suitcases were handed to them by one Shri Mohamed Hussain who was their neighbor. Shri A. Krishnan informed that though he was aware of the gold concealed, the two ladies were unaware of this fact. Shri Mohamed Hussain in his statement revealed that the gold which was smuggled from Burma to Kolkata to Chennai was given to him by one Shri Peer Bhai whom he knew for the past few months, and he agreed to transport the gold to Chennai using the aforementioned three passengers for a monetary consideration of Rs. one lakh and ticket expenses.

3. The Original Adjudicating Authority, vide its Order in Original No. 59652/2017 dated 10.11.2017 absolutely confiscated the impugned gold bars, and imposed a penalty under Section 112 (a) of the Customs Act, 1962 of Rs. 15,00,000/- on Shri S. Mohamed Hussain, a penalty of Rs. 5,00,000/- on Shri A. Krishnan, and a penalty of Rs. 20,00,000/- under Section 112 (a) of the Customs Act, 1962 on Shri Peer Bhai @ Kasim bhai.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner (Appeals). Commissioner of Customs (Appeals) Chennai vide his Order-in-Appeal No 99 & 100/2018 dated 26.03.2018 the rejected the Appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that.

5.1 The order of the appellate authority is against law, weight of evidence and circumstances and probabilities of the case; Gold is not a prohibited item and as per

the liberalized policy gold can be released on payment of redemption fine and penalty; It is alleged that the gold was smuggled from Burma but the department is not able to say who has smuggled the gold; It is requested that the appraiser may be asked to reassess the gold as the same is Indian gold as otherwise the Applicant will be put to an irreparable loss; The contention that the gold is of foreign origin is not based on non-existent material and also amounts to extraneous consideration; The Applicant submits that the gold was brought from local sources; The applicant was forced to write a statement given at the time of seizure and the statement was given under threat and coercion; The witness who have witnessed the seizure were not allowed to be cross examined; The Appellate authority has failed to appreciate that there is a difference between absolute prohibition and restriction; The adjudication authority has not given the option of section 125 of the Customs Act, 1962; The Hon'ble Supreme Court (full bench) in the case of Om Prakash vs UOI states that the main object of the enactment of the said Act was the recovery of Excise Duties and not really to punish for infringement of its provisions.

5.3 The Applicant cited judgments and boards policies in support of their case, and pleaded that the penalties imposed is very high and unreasonable. The Applicant pleaded that the impugned Order in Appeal be set aside and release the gold and render justice.

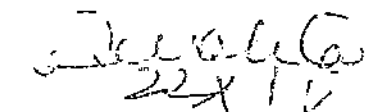
7. The Government has gone through the case records it is observed that the gold recovered from the Applicant was indigenously concealed in the in the cavities of the trolley suitcases carried by the passengers and was recovered when the officers intercepted the passengers at the Chennai Railway station. The Applicant has himself admitted that the gold was smuggled into India from Burma border. A retraction made at a later stage cannot come to the rescue of the Applicant. The Applicant did not produce any bill or documents to prove the licit purchase of the gold. The Government notes that the Applicant has also not produced any documentary evidence at the Appeal stage in support of his case. The activities of Shri Mohamed Hussain, Shri A. Krishnan and Shri Per Bhai @ Kasim Bhai and the Burmese markings on the gold and the fact that the gold was wrapped in Burmese news papers clearly point to the fact that the gold is not of Indian origin as claimed by the Applicant. The release of the gold could have been entertained if the Applicant produced evidentiary documents to prove the licit purchase of the gold. The absence of the same clearly indicates that the gold has been smuggled across the border. The elaborate plan initiated by the Applicant and Shri A. Krishnan in transporting the gold by using the rail route also arouse suspicion as to the origins of the gold. The above acts have therefore rendered the Applicant liable for penal action under Section

112 (a) of the Customs Act, 1962. The Government therefore holds that the Original Adjudicating Authority has rightly confiscated the gold absolutely and imposed a penalty. The Government also holds that Commissioner (Appeals) has rightly upheld the order of the original adjudicating authority. The revision application therefore merits dismissal.

8. The Government therefore is not inclined to interfere in the Order in Appeal C.Cus-II No. 99 & 100/2018 dated 26.03.2018 passed by the Commissioner of Customs (Appeals) Chennai.

9. The Revision application is dismissed.

10. So, ordered.



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

ORDER No. 826/2018-CUS (WZ) /ASRA/

DATED 22.10.2018

To,

Shri S. Mohamed Hussain  
C/o S. Palanikumar, Advocate,  
No. 10, Sunkurama Chetty Street,  
Opp High court, 2<sup>nd</sup> Floor,  
Chennai - 600 001.

Copy to:

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