



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 373/102/B/16-RA / 1948

Date of Issue

19.11.2018

ORDER NO. 83//2018-CUS (SZ) / ASRA / MUMBAI/ DATED 23.09.2018 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 Shaik Abdulla

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. 148/2016 dated 24.03.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Shri Shaik Abdulla (herein referred to as Applicant) against the Order in Appeal C. Cus-I No. 148/2016 dated 24.03.2016 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 26.11.2016. He was intercepted when proceeding towards the exit after clearing the Green Channel and examination of his person resulted in the recovery of five cut gold pieces totally weighing 590 gms valued at Rs. 15,18,070/- (Rupees Fifteen lakhs Eighteen thousand and Seventy). The gold was recovered from the black wallet kept in the front pocket of the pants worn by him.

3. After due process of the law vide Order-In-Original No. 457/2015-16-AIRPORT dated 30.01.2016 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. 1,50,000/- under Section 112 (a) 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. 148/2016 dated 24.03.2016 rejected the Appeal of the Applicant.

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

4.1 The Applicant had brought the gold for his personal use, from his own funds, for a wedding of his sister without any commercial interest; He did not realise the importance of not declaring the gold at the relevant time; The entire proceedings were completed without the providing any legal assistance to the Applicant the denying the opportunity of natural justice; That he had not even attempted to enter the green channel when he was intercepted by the Custom officers; The gold was brought for his personal use and just because of non-declaration the Applicant cannot be categorised as a smuggler and the gold confiscated absolutely; The heavy personal penalty may please be reduced as the Applicant cannot pay the same due to his meagre salary; The Applicant's ignorance and lack of English knowledge was exploited during the seizure;



The adjudication authority has not exercised the option of section 125 of the Customs Act, 1962; ; 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;

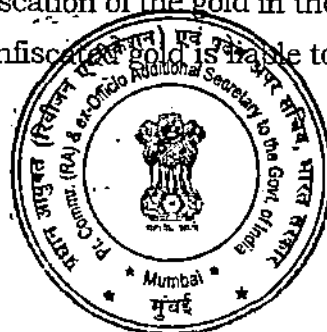
4.3 The Revision Applicant cited various assorted judgments and boards policies in support of allowing re-export of the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 15.10.2018, the Applicant Shri Shaik Abdulla attended the hearing. He re-iterated the submissions filed in Revision Application and submitted that a lenient view may be taken and re-export may be allowed on lower redemption fine and penalty. 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 gold was kept in the wallet carried by the Applicant in his pant pocket and it was not ingeniously concealed. The gold is claimed by the Applicant and there is no other claimant. The gold was kept in the wallet 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 590 gms valued at Rs. Rs. 15,18,070/- (Rupees Fifteen lakhs Eighteen thousand and Seventy) is ordered 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 Rs. 1,50,000/- (Rupees One lakh Fifty thousand) to Rs. 1,20,000/- (Rupees One Lakh twenty thousand) 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

11. So, ordered.

Ashok Kumar Mehta
23.10.18

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

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

DATED 23.09.2018

To,

Shri Shaik Abdulla
No. 5/64,
Gandhinagar DBN Palli,
Rajampeta,
Kadapa,
Andhra Pradesh - 516 115.

ATTESTED

S.R. Hirulkar
19/10/18

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

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.

