

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. 373/422/B/14-RA/1306

Date of Issue 14.03.2018

ORDER NO. 96/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 13.03.2018 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. Thamim Ansari

Respondent : Commissioner of Customs(Airport), Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C.Cus No. 2/2014 dated 29.10.2014 passed by the Commissioner of Customs (Appeals) Chennai.



ORDER

This revision application has been filed by Shri. Thamim Ansari against the order no C.Cus No. 2/2014 dated 29.10.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated facts of the case are that the applicant, an Indian National had arrived at the Chennai Airport on 12.03.2014. Examination of his baggage resulted in recovery of gold pieces weighing 390 gms valued at 11,82,480/-, these gold pieces were ingeniously concealed inside two wheels of his suitcase. The Original Adjudicating Authority, vide his order 304/2014 dated 22.04.2013 absolutely confiscated the gold rods referred to above. A Penalty of Rs. 1,20,000/- under Section 112 (a) of the Customs Act, 1962 was also imposed on the Applicant.

3. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals) Chennai. The Commissioner of Customs (Appeals) Chennai, vide his Order in Appeal C.Cus No. 2/2014 dated 29.10.2014 rejected the Appeal.

4. 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.

4.2 The gold is not a prohibited item.

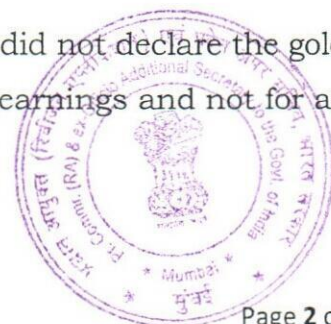
4.3 The Hon'ble Supreme Court has in recent judgements states that the object of the Customs Authority is to collect the duty and not to punish the person who violated the Customs Act.

The Applicant was not aware that it was an offence to bring gold without proper documents that the gold belongs to him.

4.4 The only allegation against him is that he did not declare the gold.

4.5 He had purchased the gold from his own earnings and not for any third party.

Ansari



4.6 The Applicant did not admittedly pass through the green channel. He was at the red channel all along at the arrival hall of Airport.

4.7 There is no provision in the Customs Act which made it mandatory to confiscate absolutely. Section 125 it is open for the Authority to give an option for redemption against payment of fine.

4.8 The respondent has passed an order stating that as the Applicant is a carrier, the gold cannot be redeemed on payment of redemption fine. Whereas under section 125 of the Customs Act, even when confiscation is authorized, gives it to the owner and where such owner is not known to the person from whose possession or custody such goods have been seized.

The Revision Applicant cited various assorted judgments in support of re-export even when the gold was concealed in support of his case, and prayed for permission to re-export the gold on payment of nominal redemption fine and reduced personal penalty.

5. A personal hearing in the case was held on 07.03.2018, the Advocate for the respondent Shri Palanikumar re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the case records it is seen that the gold rods were concealed in wheels of the suitcase. The gold was concealed ingeniously with the intention to hoodwink the customs authorities. Government also notes that the gold pieces were not declared by the Applicant in the Customs declaration card as required under Section 77 of the Customs Act, 1962. This clearly indicates mensrea, and that the Applicant had no intention of declaring the gold to the authorities and if he was not intercepted before the exit, the Applicant would have taken out the gold pieces without payment of customs duty. In his voluntary statement recorded after his interception the Applicant revealed that the gold was given to him at the Singapore Airport, and he was offered a monetary consideration to carry and hand it over to some other person in India. He was not an eligible passenger to import gold. In view of the above



mentioned observations the Government is inclined to agree with the absolute confiscation and penalty in the Order in Appeal. The impugned gold needs to be confiscated absolutely and the Revision Application is liable to be rejected.

7. Taking into consideration the foregoing discussion, Government upholds the Order in Appeal C. Cus No. 2/2014 dated 29.10.2014.

8. Revision Application is dismissed.

9. So, ordered.

(Handwritten Signature)

13.07.18
(ASHOK KUMAR MEHTA)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 96 /2018-CUS (SZ) /ASRA/Mumbai

DATED 13.07.2018

To,

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

True Copy Attested

(Handwritten Signature)

SANKARSAN MUNDA
Asstt. Commissioner of Custom & C. Ex.

Copy to:

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

