

REGISTERED  
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. 373/213/B/16-RA | 2130

Date of Issue 28.11.2018

ORDER NO. 968/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.11.2018  
 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 : Smt. Shaik Sabeena

Respondent: Principal Commissioner of Customs,  
 Anna International Airport, Chennai.

Subject : Revision Application filed, under Section 129DD of the  
 Customs Act, 1962 against the Order-in-Appeal No. C.  
 Cus-I No. 305/2016 dated 27.09.2016 passed by the  
 Commissioner of Customs (Appeals-I), Chennai.



ORDER

This revision application has been filed by Smt. Shaik Sabeena (herein referred to as "the applicant") against the Order in Appeal C. Cus-I No. 305/2016 dated 27.09.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

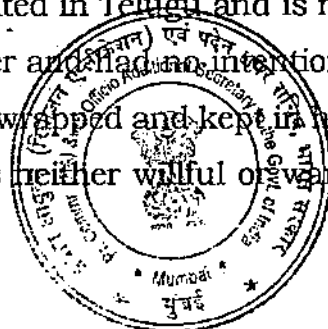
2. Briefly stated the facts of the case are that the applicant, arrived at the Chennai Airport on 08.04.2016. She was intercepted and examination of her baggage resulted in the recovery of three gold bits weighing 350 gms valued at Rs. 10,25,850/- (Rupees Ten lakhs Twenty Five thousand Eight Hundred and Fifty). The gold was recovered from the checked in baggage carried by the Applicant.

3. After due process of the law vide Order-In-Original No. 45/2016-17-AIRPORT dated 06.07.2016 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. 1,00,000/- 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-I No. 305/2016 dated 27.09.2016 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 has simply confirmed the order in original without appreciating the facts; The applicant is an NRI and staying in Kuwait for more than a decade; She has never availed the benefit of the Notification of concessional duty at any point and has been coming to India for short periods and is an eligible passenger to import gold on concessional duty; The details of the visits to India can be ascertained from her passport; Gold is freely importable and is not a prohibited item; The applicant is educated in Telugu and is not conversant in English, she is a bonafide passenger and had no intention of evading payment of duty; The gold was properly wrapped and kept in her baggage and not concealed; The non-declaration is neither willful or wanton; The gold was her husbands



entire savings; Section 125 of the Customs Act, 1962 is clear that the option to redeem should have been extended.

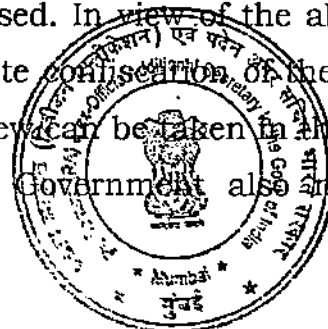
5.2 The Revision Applicant cited case laws in his defense and prayed for setting aside the Order in Appeal and release of the gold on redemption fine and setting aside the penalty in the interest of justice.

6. A personal hearing in the case was scheduled to be held on 27.11.2018. The Applicant appeared for a personal hearing and submitted that s was stopped before entering the green channel and she had not misdeclared the goods and prayed that goods may be released for home consumption on lesser redemption fine and penalty.

7. The Government has gone through the facts of the case. A written declaration of gold was not made by the applicant as required under Section 77 of the Customs Act, 1962 and under the circumstances confiscation of the gold is justified.

8. However, the facts of the case do not allege that the applicant had crossed the Green Channel. The impugned gold was carried by the applicant in her baggage and was not indigenously concealed. Import of gold is restricted not prohibited. The applicant is a house wife has no past history of such misdemeanors. The ownership of the gold belongs to 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.

9. 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 absolute confiscation of the gold is harsh and unjustified and therefore, a lenient view can be taken in the matter while imposing redemption fine and penalty. Government also notes that the



applicant having resided abroad for more than the required period and having requisite foreign exchange, is therefore eligible for concessional rate of duty. The applicant has pleaded for redemption of the gold for home consumption on fine and penalty and the Government is inclined to accept the plea. The impugned Order in Appeal therefore needs to be modified.

10. The Government sets aside the absolute confiscation of the gold. The impugned gold weighing 350 gms valued at Rs. 10,25,850/- (Rupees Ten lakhs Twenty Five thousand Eight Hundred and Fifty) is allowed to be redeemed for home consumption on payment of redemption fine of Rs. 2,00,000/- ( Rupees Two Lakhs) under section 125 of the Customs Act, 1962. Government observes that the facts of the case justify reduction in the penalty imposed. The penalty of Rs. 1,00,000/- ( Rupees One lakh ) is reduced to Rs. 40,000/- (Rupees Forty thousand ) under section 112(a) of the Customs Act, 1962.

11. The impugned Order in Appeal is modified as detailed above. Revision application is allowed on above terms.

12. So, ordered.

Received Original Order Copy for

S. Sabeena.

28-11-2018.

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Order no - 968/2018-CUS(SZ)/ASRA/  
Mumbai

*(Signature)*  
28.11.18

(ASHOK KUMAR MEHTA)

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

ORDER No. 968/2018-CUS (SZ) /ASRA/MUMBAI DATED 28.11.2018

To,

Smt. Shaik Sabeena  
House No. 3-13-96, Kudba,  
Allagdda, Kurnol- 518543  
Andhra Pradesh.

**ATTESTED**

*(Signature)* 28-11-18  
**S.R. HIRULKAR**  
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai-600 027.
2. The Commissioner of Customs (Appeals), Rajaji Salai, Customs House, Chennai-600 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.

