

SPEED POST



F. No. 380/50/B/SZ/2020-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 26/03/25

Order No. 28/25-Cus dated 26-03-2025 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal AIRPORT.Cus. I No. 215/2020 dated 28.08.2020 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Pr. Commissioner of Customs, Chennai-I.

Respondent : Shri Mohamed Ribai, Chennai.

ORDER

A Revision Application No. 380/50/B/SZ/2020-RA dated 26.10.2020, has been filed by the Commissioner of Customs, Chennai-I (hereinafter referred to as the Applicant Department), against the Order-in-Appeal AIRPORT.Cus. I No. 215/2020 dated 28.08.2020 passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has partially allowed the appeal filed by Shri Mohamed Ribai, Chennai (hereinafter referred to as the Respondent/passenger) against the Order-in-Original, passed by the Joint Commissioner of Customs (Adjudication-AIR), Chennai-I, bearing No. 28/2020-21-Commissionerate-1 dated 06.05.2020, by allowing redemption of the confiscated electronic consumer goods i.e. I-Phones/I Pads on payment of fine of Rs. 2,20,000/- under Section 125 of the Customs Act, 1962.

2. Brief facts of the case are that the Respondent, an Indian Passport holder, arrived on 22.09.2019 at Anna International Terminal, Chennai Airport, Meenambakkam, Chennai, from Hongkong. He was intercepted by the Customs officers at the exit of the arrival hall of the airport on a reasonable suspicion that he might be carrying gold/dutiable goods, either in his baggage or on his person. On examination of his checked-in baggage, 46 nos. of E-cigarettes packet, 50 nos. of E-cigarettes cartridges packets, 02 nos. of Apple IPAD PRO (256 GB), 02 nos. of I-Phone 11 PRO (256 GB), 05 nos. of I-Phone 11 PRO MAX (256 GB) and 03 nos. of I-Phone 11 PRO MAX (512 GB), altogether valued at Rs. 11,09,000/- were recovered. During the search, the officers recovered one gold cut bit and two round shaped gold bits, totally weighing 83 grams valued at Rs. 3,23,202/- from his pant pocket. The total value of seized goods was Rs. 14,32,202/-. Since the Respondent attempted to smuggle the gold by not declaring it to Customs at Chennai airport, was not an eligible passenger to bring gold into India as he went abroad on 18.09.2019 and stayed only for 3 days and was not in possession of any valid document for the legal import of gold into India, the impugned gold was seized under Section 110 of Customs Act, 1962 read with FT(DR) Act, 1962, under a mahazar. Also, as the e-cigarettes packets and e-cigarettes cartridges packets were in commercial quantity and they did not have the stipulated statutory warning as prescribed under the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce,

Production, Supply and Distribution) Act, 2003 and import of e-cigarettes and its cartridges is prohibited under the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Ordinance, 2019, the impugned e-cigarettes packets alongwith the I-Phones and IPADs were seized under Section 110 of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992.

3. After due process of law, the Adjudicating Authority vide the aforementioned Order-in-Original dated 06.05.2020 ordered for absolute confiscation of impugned gold items, E-cigarettes packets and electronic items i.e. I-Phones and IPADs, all totally valued at Rs. 14,32,202/-, recovered from the Respondent under Section 111(d), (i) and (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 alongwith with material object of no commercial value used for concealment viz., adhesive tape under Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 1,50,000/- was also imposed on the Respondent under Section 112(a) of the Customs Act, 1962.

4. Aggrieved, the Respondent filed an appeal before the Commissioner of Customs (Appeals-I), Chennai who has vide the impugned O-I-A, partially allowed the appeal by allowing redemption of only the confiscated electronic consumer goods i.e. I-Phones/I Pads on payment of fine of Rs. 2,20,000/- under Section 125 of the Customs Act, 1962. Aggrieved by O-I-A, the Applicant department has filed the above said revision application.

5. The instant revision application has been filed, mainly, on the grounds that the order of the appellate authority regarding partially modifying the order of original adjudicating authority by extending redemption of the electronic consumer goods i.e. I-Phones/I Pads valued at Rs. 10,05,000/- under Section 125 of the Customs Act, 1962 on payment of a fine of Rs. 2,20,000/- is neither legal nor proper in as much as the passenger had contravened the Section 3(3) of Foreign Trade (Development & Regulation) Act, 1992 read with Sub-section (2) of Section 11 of Customs Act, 1962; that the Respondent had neither declared the impugned gold alongwith electronic goods nor was in possession of any valid documents for the legal import of Electronic Consumer goods; that Respondent in his voluntary statement had admitted that the impugned goods did not

belong to him and he had acted as carrier for monetary consideration; that the statement of the Respondent has not been retracted; that the goods brought by passenger were in commercial quantity and could not be considered as bonafide baggage in terms of Section 79 ibid; that the Commissioner (Appeals) has rightly discussed in his findings para 11 & 12 that the impugned gold & e-cigarettes were rightly confiscated and imposing penalty on the Respondent, but erroneously ordered release of consumer electronic goods valued at Rs. 10,05,000/- on a redemption fine.

6. Personal hearings in the matter were fixed on 20.12.2024 and 30.12.2024. Sh. P.K. Saravanan, Deputy Commissioner of Customs, Chennai on behalf of the Applicant department appeared and reiterated the submissions contained in the Revision Application. No one appeared for the Respondent and also no request for adjournment etc. has been received from him. Therefore, it is presumed that Respondent has nothing to add in the matter.

7.1 The Government has examined the matter. The Commissioner (Appeals) has partly modified the order of the lower Adjudicating Authority by allowing redemption of electronic consumer goods i.e. I-Phones/I Pads valued at more than Rs. 10 Lakhs as mentioned above. The Government observes that these goods are in commercial quantities and were not declared to Customs as was required under Section 77 of the Customs Act 1962. Moreover, the Respondent has admitted to smuggling gold, E-cigarettes & consumer electronic goods; acting as a carrier for a person outside Chennai airport; with a clear intention to avoid detection and evade Customs duty. Not only has this statement not been retracted, but the contention that this statement was not voluntary has been negated by the Appellate Authority himself, as discussed in para 10 of his order, which records as below:

"The appellant is a short visiting passenger and obviously did not declare the seized goods and other goods, but for the timely interception by the proper officers of Customs, the above act would have gone undetected. It is evident from his confession statement that he has acted as a carrier for monetary consideration. He has further noted that "in the case of Naresh J. Sukhawani Vs. UOI {1996 (83) E.L.T. 258 (S.C.)} the Hon'ble Supreme Court has held that statement recorded u/s 108 of Customs Act is a material

piece of evidence. The entire proceedings was legally conducted in the presence of two independent witnesses and there was no allegation that the statement was given under threat or coercion at that point of time. Therefore, his contention that he was forced to sign is liable to be rejected."

7.2 Thus, the Commissioner (Appeals) has upheld the absolute confiscation of gold and E-cigarettes brought by the Respondent with the intention and act of smuggling which was established beyond doubt. It is thus clear that the goods are not bonafide baggage. Upholding absolute confiscation of part goods and the imposition of penalty for violation of the provisions of the Customs Act, 1962 while allowing redemption of part goods appears to be contradictory. Upholding the penalty imposed by the Original Adjudicating Authority, the Commissioner Appeals has noted that *"penalty of Rs. 1,50,000/- imposed by the AA is commensurate with the contravention committed by Mohamed Ribai. The plea for reduction of penalty does not have any merits and, therefore, is not considered."*

7.3 Thus, the Government finds that while the Order-in-Appeal upholds the absolute confiscation of other goods brought by the Respondent as well as penalty imposed upon him, the electronic items have been allowed redemption, relying upon the case of Commissioner of Customs Vs. Atul Automations Private Ltd. reported in 2019(365)E.L.T465(SC) Hon'ble Supreme Court has held that Section 125 of the Customs Act 1962 regarding the discretion to levy fine in lieu of confiscation. In this context, the Government observes that the case of Atul Automations Private Ltd. pertains to import of used digital photocopiers and printers under DGFT authorization and does not relate to importation of goods as baggage. Thus, the facts of this case and the case of Atul Automations Private Ltd. are clearly distinguishable. Therefore, the reliance placed upon this case law to allow redemption of clearly smuggled goods in part does not appear to be logical or correct.

7.4 In light of the above and the facts and circumstances of this case, the order of Commissioner (Appeals) allowing redemption in part for goods which are clearly not bonafide baggage and when the act of smuggling has been admitted to in a voluntary statement under Section 108 of the Customs Act is not sustainable.

8. Therefore, the impugned order of the Commissioner (Appeals) is set aside and the Order-in-Original is restored.

Shubhagata Kumar
26/3/2025

(Shubhagata Kumar)

Additional Secretary to the Government of India

The Principal Commissioner of Customs,
Commissionerate-I, Chennai-I (Airport),
New Custom House, Meenambakkam,
Chennai-600027.

Order No. 28 /25-Cus dated 26-03-2025

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
2. Shri Mohamed Ribai, S/o Shri Abdul Hameed, 6/100, Saint Xavier Street, Seven Wells, Chennai – 600 001.
3. PPS to AS(RA).
4. Guard File.
- ✓ 5. Spare Copy.
6. Notice Board.

Shailendra Kumar Meena
ATTESTED

शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
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