

REGISTERED

SPEED POST



F. No. 372/09/B/2018-R.A.
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... 11/11/19

ORDER NO. 43/19- Cus dated 7-11-2019 OF THE GOVERNMENT OF INDIA, PASSED BY MS. MALLIKA ARYA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

SUBJECT : Revision Application filed under section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. Kol/Cus/A/P/AA/2042/2017 dated 05.12.2017, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : **Mr. Somchai Mahaderrai Saraiwar, Kolkata.**

RESPONDENT : Commissioner of Customs, Kolkata.

ORDER

A Revision Application No. 372/09/B/2018-R.A. dated 29.01.2018 has been filed by Mr. Somchai Mahaderrai Saraiwar, Kolkata (hereinafter referred to as the applicant) against Order-in-Appeal No. Kol/Cus/A/P/AA/2042/2017 dated 05.12.2017 passed by the Commissioner of Customs (Appeals), Kolkata, wherein the order-in-original of the Joint Commissioner of Customs confiscating these gold pieces weighing 361.7 gms and valued at Rs. 10,92,334/- has been upheld. The Joint Commissioner had also imposed a penalty of Rs. 1 Lakh on the applicant.

2. The revision application has been filed on the grounds that the applicant, being NRI, may be permitted to re-export the gold bars without fine and penalty.
3. A personal hearing was granted on 24.10.2019 but no one appeared either from the applicant or from the respondent's side. A letter dated 18.10.2019 has been received from the applicant's consultant requesting that his case may be decided on the basis of available records. Since no one appeared for the respondent and no request for adjournment has been received from them, therefore the matter is being taken up for disposal on the basis of facts on record.

4. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application, it is observed that in the instant case, it is evident that applicant is the bonafide owner of impugned goods and the applicant had requested the Commissioner (Appeals) to allow the re-export of impugned goods.

5. Section 80 of the Customs Act, 1962 states as under:-

"SECTION 80. Temporary detention of baggage. - Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name."

6. Therefore the detained imported goods can be re-exported on the request of the passenger where he/ she is returning from India to a foreign country. Thus, apart from declaration of the imported goods at the time of arrival of passenger, return of the passenger to the foreign country after a short visit to

India as a tourist or otherwise is a crucial condition for re-export of such goods. The applicant has contended that he had declared the gold items and even produced a cash memo dated 12.07.2017 issued in his name for purchase of the impugned gold pieces at Bangkok.

7. The applicant is a person of Indian origin and holds a Thailand national holding Thai Passport No. AA3014294 dated 11.06.2014. He arrived in India on 15.10.2017 and left the country on 16.10.2017.
8. In a similar case of Ashok Kumar Chirimar, this authority has allowed the re-export of gold to the passenger who was an NRI and was on a short visit to India [Revision Order No. 22/19-Cus dated 10.10.2019].
9. Considering these facts, the Government holds that the re-export of the confiscated gold pieces can be allowed in the present case in terms of Section 80 of Customs Act, 1962. Therefore Government allows re-export of the impugned gold pieces on payment of redemption fine of Rs. 4,00,000/- (Four lakhs only) under Section 125 of the Customs Act, 1962. The penalty of Rs. 1,00,000/- (One lakh only) under Section 112 of Customs Act, 1962 is upheld. The above fine and penalty should be paid within 30 days of the receipt of the order.