

SPEED POST



F. No. 372/51/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 26/2/21

ORDER NO. 47 / 21-Cus dated 26-2-2021 OF THE GOVERNMENT OF INDIA, PASSED BY Sh. Sandeep Prakash, 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/991/2018 dated 01.06.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : Mr. Rajesh Kumar Thakur, Kolkata.

RESPONDENT : Commissioner of Customs (Airport), Kolkata.

ORDER

A Revision Application No. F. No. 372/51/B/2018-R.A. dated 09.08.2018 has been filed by Mr. Rajesh Kumar Thakur, Kolkata (hereinafter referred to as the applicant) against Order-in-Appeal No. KOL/CUS/(A/P)/AA/991/2018 dated 01.06.2018, passed by the Commissioner of Customs (Appeals), Kolkata. The commissioner (Appeals) has upheld the Deputy Commissioner's Order-in-Original ASA No. 184/18 (AIU) dated 11.02.2018 absolutely confiscating one cut piece of 24 carat gold, weighing 98.60 grams valued at Rs. 3,00,730/- under Sections 111(d), 111(i) and 111(l) of Customs Act, 1962 as also imposing a penalty of Rs. 30,073/- under Section 112(a) and 112(b) of the Act *ibid*.

2. The brief facts of the case are that the applicant arrived on 22.02.2016 at NSCBI Airport, Kolkata from Dubai and was intercepted at the exit gate after he had passed through green channel. His checked-in baggage was searched which resulted in the recovery of one cut piece of 24 carat gold weighing 98.60 grams and valued at Rs. 3,00,730/-. The Deputy Commissioner of Customs, Kolkata, vide aforesaid Order-in-Original dated 11.02.2018, ordered absolute confiscation of the seized gold item and imposed penalty of Rs. 30,073/- under Section 112 of the Customs Act, 1962. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) which was rejected. The Revision application has been filed on the ground that the order of the Commissioner (Appeals) is erroneous as the gold items were confiscated without giving any option to re-export the same without any fine/penalty as the applicant is an NRI. Also the value of the gold should have been taken as per the invoice produced by the applicant and not the market value.

3. Personal hearing in the matter was held on 24.02.2021. Sh. Rajarshi Chakraborty, Superintendent, attended the hearing on behalf of the respondent and supported the orders of lower authorities meriting rejection of the revision application. The applicant's authorized Consultant, Sh. Barinder Singh, has submitted his written submission dated 11.12.2020 wherein it has been stated that he will not attend hearing and requested for the revision application to be allowed on the grounds mentioned therein.

4. The Government has examined the matter. It is not in dispute that the gold item was not declared by the applicant on his arrival from Dubai. He was intercepted at the exit gate after he had passed through the green channel and the screening of his checked-in baggage resulted in the recovery of the said gold. The Commissioner (Appeals) has correctly held the confiscated gold as 'prohibited goods'. The law on this issue is settled by the judgement of Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collection of Customs, Calcutta & Ors [1971 AIR 293]. Hon'ble Supreme Court held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words all types of prohibition. Restriction is one type of prohibition". An identical view has been taken by the Apex Court in the case of Om Prakash Bhatia Vs. Commissioner of Customs, Delhi [2003(155)ELT423(SC)] wherein the Hon'ble Supreme Court has held that "if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods".

5. As regards the request for re-export of seized goods, the Government observes that in terms of Section 80 of Customs Act, 1962, the facility of temporary detention and subsequent re-export of prohibited goods is available only if "a true declaration has been

made under Section 77" in respect of such goods. In the present case, such a declaration was not made. The contention that the applicant produced an invoice even before the detection of the gold in the applicant's baggage is not borne out by records as he did not mention this fact even when he was given an opportunity at the stage of Spot Adjudication when he merely indicated that he did not want any personal hearing. In these facts and circumstances, the request for re-export could not have been entertained.

6. In view of the above, the Government upholds the impugned Order-in-Appeal. The revision application is rejected.



(Sandeep Prakash)

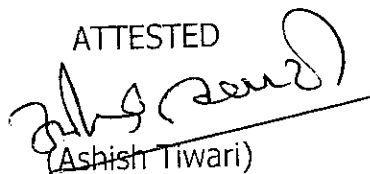
Additional Secretary to the Government of India

Mr. Rajesh Kumar Thakur,
27-B, Rahim Ostagar Road,
Jodhpur Park, Kolkata-700045
ORDER NO. 47 / 21-Cus dated 26-2-2021

Copy to:-

1. The Commissioner of Customs, Airport, Kolkata.
2. The Commissioner of Customs (Appeals), Kolkata.
3. Guard File.
4. ~~Spare Copy.~~

ATTESTED



(Ashish Tiwari)
Assistant Commissioner.