

SPEED POST



F. No. 373/37/B/2018-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.. 17/3/23

Order No. 101/23-Cus dated 17.3.2023 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 129 DD of the Customs Act 1962 against the Order-in-Appeal C. Cus. I. No. 344/2015 dated 29.06.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Syed Kadher Vali, Cuddapah

Respondent : Pr. Commissioner of Customs, Chennai-I

ORDER

A Revision Application, bearing No. 373/37/B/2018-RA dated 27.12.2017, has been filed by Sh. Syed Kadher Vali, Cuddapah (hereinafter referred to as the Applicant), against the Order-in-Appeal C. Cus. I. No. 344/2015 dated 29.06.2015, passed by the Commissioner of Customs (Appeals-I), Chennai, whereby the Commissioner (Appeals) has upheld the Order-in-Original of the Joint Commissioner of Customs, Anna International Airport, Chennai, bearing no. 145/2015 dated 09.03.2015. Vide the aforementioned Order-in-Original, 03 nos of gold pieces, recovered from the Applicant, totally weighing 1470 grams and totally valued at Rs. 41,74,800/-, had been absolutely confiscated under Section 111(d) & 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 3,75,000/- was also imposed on the Applicant, under Section 112 of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived at Chennai Airport from Kuwait, on 06.07.2014, while he was walking out through Green Channel with two hand bags and two checked in luggage. He had filled up the value of the goods carried by him as 'NIL' in Customs Declaration Card. On enquiry by the officers as to whether he was carrying any gold/gold ornaments or contraband, he replied in negative. Upon examination of one of his checked in baggage, two Vaseline containers were found, which upon opening were found to contain three yellow colour metal pieces, weighing 505 grams, 491 grams and 474 grams. Thus, in all 03 nos of yellow colour metal pieces were found totally weighing 1470 grams. The Government approved gold appraiser examined and certified the said 03 yellow colour metal pieces to be cut rectangular gold bars totally weighing 1470 grams of 24 carat purity and appraised the total value of the gold to be Rs. 41,74,800/-. On enquiry by the officers as to whether the Applicant possesses any valid permit for the legal import of the recovered gold, he replied in negative. The Applicant, in his statement dated 06.07.2014, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that he went to Kuwait on job as Driver on 16.06.2014 and stayed with his brother Sh. Syed Jaffar at Kuwait and not liking the job he wished to return back to India; that the gold was given by his brother's friend Sh. Sattar in Kuwait; that Sh. Sattar had told while giving the cardboard carton contained gold that a person would meet him at Chennai Airport on arrival and he could get Rs. 10,000/- from that person without revealing the person's identity or name and the receiving person would take him to Rajampet by taxi from where he had to take bus to Kadappa; that he admitted that bringing gold without declaring and by way of concealing in baggage was an offence; and that he did not bring any money for payment of customs duty and committed this offence for monetary benefit as he was unemployed and living in poverty.

3. The revision application has been filed, mainly, on the grounds that the Applicant did not cross the customs barrier; that he is an eligible passenger to bring gold; that he knew only Telugu and the statement was typed in English and his signature was forcefully obtained on the statement without explaining the same; that the gold was not ingeniously concealed; that import of gold is not prohibited; that gold ought to have been permitted for re-export; and that penalty imposed is too high and has to be reduced.

4. Personal hearing was fixed on 26.12.2022 which was adjourned to 01.03.2023 at the request of the learned Counsel for the Applicant. No one attended the hearing on

01.03.2023. Hence the matter was adjourned to 15.03.2023 as a last and final opportunity. In respect of hearing scheduled on 15.03.2023 another request for adjournment was received on the grounds of ill health of learned Advocate for the Applicant. However, this request for adjournment was not accepted as the grounds for adjournment were unsupported. Hence, the matter is taken up for decision based on records.

5. The Government has carefully examined the matter. As per sub-section (2) of Section 129DD of the Customs Act, 1962, a revision application shall be made within three months from the date of communication to the Applicant of the order against which the application is being made provided the Central Government may, if it is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months. Thus, a revision application can be made within a total period of six months from the date of communication of the order of the Commissioner (Appeals), including the condonable period of three months. In the present case, the Order-in-Appeal dated 29.06.2015 is claimed to have been communicated to the Applicant only on 26.09.2017, i.e., almost two years and three months after the date of the Order. The revision application has been filed on 27.12.2017, which is beyond the normal limitation period of three months, even if the date of communication claimed by the Applicant i.e., 26.09.2017 is accepted. However, no condonation of delay application has been filed. As per letter dated 09.05.2018, the Applicant was advised to file an application explaining the delay of almost two and a half years from the date of the Order-in-Appeal. This was followed by letter dated 14.12.2022, 15.02.2023, & 01.03.2023. Besides advising the Applicant to file the condonation of delay application, the Applicant was also advised to furnish evidence of date of receipt of Order-in-Appeal as claimed by him. However, there is no response from the Applicant nor any request for condonation of delay has been filed. As already stated, even if the claimed date of communication, i.e., 26.09.2017, were to be accepted, the application is still found to have been filed beyond the normal limitation period of three months. In these facts and circumstances, the revision application is liable to be rejected, as time barred.

6. The revision application is rejected, accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Syed Kadher Vali
S/o Sh. Syed Nazeer Basha
62/54, (old No. 7/54)
Akkayapalli, Cuddapah
Andhra Pradesh-516001


Order No. 101 /23-Cus dated 17.3.2023

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. The Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai-600027.
3. Sh. A. Ganesh, Advocate, F Block 179, IV Street, Annanagar, Chennai-600102.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED


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