

SPEED POST



F. No. 380/64/B/2016-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: 18/01/23

Order No. 19 /23-Cus dated 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. 871/2015 dated 23.12.2015, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Pr. Commissioner of Customs, Chennai-I

Respondent : Sh. Mohamed Rasmi, Chennai

ORDER

A Revision Application No. 380/64/B/2016-RA dated 14.03.2016 has been filed by the Pr. Commissioner of Customs, Chennai-I (hereinafter referred to as the Applicant department) against the Order-in-Appeal C.Cus-I No. 871/2015 dated 23.12.2015, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original dated 14.10.2015 (O.S No. 1143/2015 - Batch A) passed by the Assistant Commissioner of Customs, Airport, Chennai in the case of Sh. Mohamed Rasmi, Chennai (hereinafter referred to as the Respondent).

2. Brief facts of the case are that the Respondent herein arrived, on 14.10.2015, at Anna International Airport, from Colombo. He was intercepted by the customs officers, at the exit of Customs Arrival Hall who tried to pass through Green Channel. After examination of his person 01 semi-finished gold chain, weighing 76 gms, valued at Rs. 1,85,008/- was recovered, which was kept concealed in his undergarment. The Respondent had not declared the said semi-finished gold chain imported by him in his Customs Declaration Form. During the personal hearing, held on the same day, the Respondent stated that he brought one semi-finished gold chain concealed in his under garment and tried to pass through Green Channel; that he did not declare the said gold chain in his Customs Declaration Form to evade customs duty; and that he is a frequent traveller and the gold brought by him was not bonafide baggage. The original authority ordered for absolute confiscation of the seized gold items under Section 111(d), (e), (l), (m) & (o) of the Customs Act, 1962. A penalty of Rs. 19,000/- was also imposed on the Respondent herein. On an appeal filed by the Respondent herein, the Commissioner (Appeals) upheld the confiscation but allowed re-export on payment of fine of Rs. 50,000/-. Penalty imposed has been upheld.

3. The revision application has been filed, mainly, on the grounds that the Respondent did not declare the said gold chain as required under Section 77 of the Customs Act, 1962; that he has stayed abroad only for 09 days and did not have the foreign currency for payment of duty; that hence the Respondent had not fulfilled the conditions stipulated under Notification no. 12/2012 and Baggage Rules; that appellate authority's order for redemption of the gold for re-export is not in order as per Section 80 of the Customs Act, 1962. Written reply dated 11.11.2019 has been filed by the Respondent herein.

4. Personal hearing in the matter was granted on 27.08.2018, 17.09.2018, 26.09.2018, 21.11.2019, 05.12.2019, 03.01.2023 & 18.01.2023. In the personal hearing held, in virtual mode, on 18.01.2023, Sh. Anburaju, AC appeared for the

Applicant department and reiterated the contents of the RA. Upon being asked, Sh. Anburaju stated that the gold in question has not been re-exported and was disposed of by the department on 19.01.2019. No one appeared for the Respondent. The Ld. Advocate for the Respondent has, vide letter dated 30.12.2022, requested to pass the order on the basis of records.

5.1 The Government has examined the matter carefully. It is observed that the issues of smuggling of gold and liability to confiscation as well as imposition of penalty stand concluded with the order of Commissioner (Appeals). The only question that, therefore, arises for consideration is whether the order of Commissioner (Appeals) modifying the order of original authority for release of the goods on payment of redemption fine for re-export is sustainable or not.

5.2 At the outset, it is observed that the Commissioner (Appeals) has noted that the Respondent herein was a frequent traveller but ordered redemption of seized gold for re-export on the ground that there is no ingenious concealment. In this case, the impugned gold has been recovered from the undergarment of the Respondent. It goes without saying that the undergarment is not for the purpose of keeping gold chain. Therefore, it was incorrect of the Commissioner (Appeals) to allow relief on the ground that "there is no ingenious concealment".

5.3.1 Further, as far as re-export of offending goods is concerned, the Government observes that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Customs Act, 1962, which reads as follows:

"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 authorized by him and leaving India or as cargo consigned in his name."

5.3.2 On a plain reading of Section 80 it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of Deepak Bajaj {2019 (365) ELT 695 (All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export under Section 80 of the Act, *ibid*. In this case, as already noted, the Applicant had made no declaration in respect of the subject goods. Further, the Hon'ble Delhi High Court has, in the case of Jasvir Kaur

vs. UOI {2019 (241) ELT 521 (Del.)}, held that re-export "cannot be asked for as of right-----". The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to re-export."

5.3.3 Hence, the re-export of offending goods could not have been permitted.

6. In view of the above, the revision application is allowed. Consequently, Order-in-Original dated 14.10.2015 is restored.



(Sandeep Prakash)

Additional Secretary to the Government of India

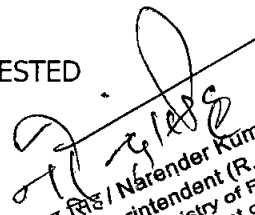
The Pr. Commissioner of Customs
Chennai-I Commissionerate, New Customs House
Meenambakkam, Chennai-600027

Order No. 19 /23-Cus dated 18-01-2023

Copy to:

1. Sh. Mohamed Rasmi, S/o Mohamed Nagoor, Noor Mansion, Mannady, Chennai.
2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. Smt. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai-600001.
4. PS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



नरेंद्र कुमार सिंह / Narender Kumar Singh
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 606, 6th Floor, B-Wing
Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066