

SPEED POST



F. No. 375/20/B/2022-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue. 17/08/22

Order No. 270/22-Cus dated 17-08-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

- Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 05(SM)Cus/JPR/2022 dated 19.01.2022 passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur.
- Applicant : Sh. Chetan Mahendrabhai Rojasara, Rajkot
- Respondent : Commissioner of Customs (Preventive), Jodhpur (Hqrs at Jaipur).

**ORDER**

A Revision Application No. 375/20/B/2022-RA dated 18.04.2022 has been filed by Sh. Chetan Mahendrabhai Rojasara, Rajkot (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 05(SM)/CUS/JPR/2022 dated 19.01.2022 passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur. The Commissioner (Appeals) has, vide the impugned OIA, upheld the order of the Additional Commissioner of Customs (P), Jodhpur, bearing No. 73/2020-ADC-Customs dated 23.12.2020.

2. The brief facts of the case are that the Applicant arrived, on 12.06.2019, at Jaipur International Airport from Dubai and was intercepted near the exit gate after he had crossed the Customs Green Channel without submission of any declaration form. On being asked by the Customs officers whether he was carrying any dutiable items to be declared, he replied in negative. On search of his baggage, a yellow-coloured chain and a transparent packet containing brown coloured paste kept in a towel, were recovered. On being enquired about the chain and the paste, he admitted that the chain is of gold and the brown coloured paste also contains gold. The Government approved valuer extracted 165.40 gms gold of 99.99% purity from the paste and the chain was found to be weighing 150 gms of 91.67% purity. The goods, totally weighing 315.64 gms and valued at Rs. 10,12,387/-, were seized under Section 110(1) of the Customs Act, 1962. The Applicant, in his statement dated 12.06.2019, tendered under Section 108 of the Customs Act, 1962, stated that he had purchased the gold from Dubai for himself; that he is running a Jewellery shop at Rajkot and he would have made ornaments from the gold for selling the same; that in greed he had smuggled the said gold and concealed in the handbag covered with cloth with intent to evade Customs duty. The original authority, vide the aforesaid Order-in-Original dated 23.12.2020, ordered absolute confiscation of gold items, under Section 111(d), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962 along with concealing material under Section 118 read with Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 2,00,000/- was also imposed on

the Applicant by the original authority, under Section 112(a)(b)(i) of the Customs Act, 1962, and a penalty of Rs. 1,00,000/- was imposed under Section 114AA of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The revision application has been filed, mainly, on the grounds that no communications were sent for date of personal hearing by the original authority; that show cause notice had been issued without pre-notice consultation; that the Applicant was forced to sign the documents prepared by the officers of Customs; that due declaration was made in the Customs Declaration Form regarding possession of gold alloy powder in form of paste and one gold chain and the purpose of importing the same; that request for re-export was not considered despite proper documentations; that there was no concealment; that request for cross-examination was rejected; that seized goods are not prohibited; that provision of Section 112(a)(i) is not applicable and no penalty can be imposed under Section 114AA. Accordingly, it has been prayed that the gold may be allowed to be redeemed and the OIA may be set aside.

4. Personal hearing was fixed on 20.07.2022, 02.08.2022 and 16.08.2022. In the hearing held on 16.08.2022, in virtual mode, Sh. Arun Goyal, Advocate, appeared for the Applicant and reiterated the contents of the revision application. He requested that the goods may be allowed to be re-exported as these were brought for remaking and re-export. The documents found in search at the Applicant's premises establish this. No one appeared for the department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. The Applicant has claimed that due declaration had been made and that he had been forced to sign the papers including the Panchnama. It is also contended that to establish the same,

the Applicant had requested for cross examination of the pancha witnesses and the valuer, which has been denied.

5.2 The Government observes that while dealing with this request for cross examination, the original authority has first proceeded to examine the evidence and has, inter-alia, recorded that "Sh. Chetan Mahendrabhai Rojasara has not disputed any fact of the proceedings carried out on the day of his arrival at International Airport Jaipur from Dubai i.e. 12.06.2019-----." (Para 8 of OIO) This finding has been recorded despite the defence submission that the Applicant was forced to sign all documents prepared and signed by the officers of Customs (Para 3.2 & 6.1 of the OIO).

5.3 Another factor which has influenced the original authority in denying cross examination is that "the noticee has not established that the persons sought for cross examination were having any bias/ malice towards the noticee" (Para 10.2 of the OIO). The Government observes that the right to cross examination will always depend on the facts and circumstances of the case. While allegations of bias or malice can be one of the factors to be considered, there are several other factors which need to be considered while deciding a request for cross examination. Hon'ble Supreme Court has, in the case of K. L. Tripathi vs. State Bank of India & Ors [AIR1984SC273], observed as follows:

"The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon particular facts, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no dispute regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action."

In the present case, the Applicant had at the original stage itself disputed the facts recorded in the Panchnama. He has also claimed to have been forced to sign the papers.

5.4 Another significant fact that needs to be observed is that the request for cross examination was denied without hearing the party. Though, the original authority has recorded that three opportunities for personal hearing were granted, the Applicant has claimed that the intimation of the date of first hearing was received after the date and in the case of second hearing adjournment was requested while the notice for third date was never received.

5.5 In the above facts and circumstances, the Government finds that the request for cross examination of Pancha witnesses and the Valuer was incorrectly denied by the original authority. As such, it would be in the interest of justice that the matter is remanded to the original authority for decision afresh after affording the Applicant the opportunity to cross-examine the aforesaid witnesses. All other issues are kept open for decision.

6. The revision application is, accordingly, allowed by way of remand to the original authority with directions as above.



(Sandeep Prakash)  
Additional Secretary to the Government of India


Sh. Chetan Mahendrabhai Rojasara  
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Order No. 270/22-Cus dated 17-08-2022

Copy to:

1. The Commissioner of Customs (P), Jodhpur, Hqrs at NCRB, Statue Circle, C-Scheme, Jaipur-302005.
2. The Commissioner of Customs (Appeals), Central Excise & CGST, NCRB, Statue Circle, Jaipur-302005.
3. Sh. Arun Goyal, Advocate, 11, Jai Ambey Colony, Madrampura, Civil Lines, Jaipur-302006
4. PA to AS(RA)
5. Guard file
6. Spare Copy

ATTESTED



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi