

REGISTERED  
SPEED POST



F.No. 372/05/B/2020-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.....03/12/21.....

Order No. - 272/21-Cus dated 03-12-2021 of the  
Government of India passed by Shri 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. Kol/Cus(Airport)/AKR/30/2020 dated  
24.01.2020, passed by the Commissioner of  
Customs (Appeals), Custom House, Kolkata.

Applicant: Smt. Jayvanti Porwal, Coimbatore.

Respondent: The Commissioner of Customs (Airport & Admn.),  
Kolkata.

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**ORDER**

A Revision Application No.372/05/B/2020-RA dated 16.03.2020 has been filed by Smt. Jayvanti Porwal, Coimbatore (hereinafter referred to as the Applicant) against the Order-in-Appeal No. Kol/Cus(Airport)/AKR/30/2020 dated 24.01.2020, passed by the Commissioner of Customs (Appeals), Custom House, Kolkata whereby Commissioner (Appeals) has upheld the Order-in-Original No. 74/2017 DC dated 17.11.2017 passed by the Deputy Commissioner of Customs, Air Intelligence Unit, NSCBI Airport, Kolkata vide which 01 gold chain and 02 pieces of gold bangles, collectively weighing 182.5 grams and valued at Rs. 4,90,925/- have been confiscated absolutely by the original authority. A penalty of Rs. 2 Lakhs was also imposed, which has been upheld in appeal.

2. The brief facts of the case are that the Applicant was intercepted by the customs officers when she was walking towards the exit gate of International Arrival Hall of NSCBI Airport, Kolkata, after arriving from Bangkok on 24.02.2015. She was asked whether she was carrying any dutiable goods or gold items in her baggage or on her person, to which she replied in negative. Not satisfied with her reply, when the customs officers brought her before a metal doorframe, she handed over one chain and two bangles of 24 Karat gold, collectively weighing 182.5 grams and valued at Rs. 4,90,925/-. On demand, she could not produce any document evidencing the licit possession/import of the recovered gold items. She had

not mentioned the value of the recovered gold items in her Customs Declaration also. In her statements dated 24.02.2015 and 28.07.2015, tendered under Section 108 of Customs Act, 1962, the Applicant admitted that the goods were concealed by her to avoid customs duty. The Deputy Commissioner of Customs, vide Order-in-original No.74/2017 DC dated 17.11.2017, ordered absolute confiscation of gold items weighing 185.5 grams under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. A penalty of Rs. 2 Lakhs was also imposed on the Applicant. Being aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals), who, vide the impugned Order-in-Appeal, rejected it as being time-barred, without going into the merits of the case.

3. The revision application has been filed, mainly, on the grounds that the Applicant did not have any intention to smuggle the said gold items as she had declared the same in her declaration form at the time of her arrival; that she may be allowed to re-export the goods under Section 80 of the Customs Act, 1962; and that the Commissioner(Appeals) had erroneously rejected the appeal as time-barred as she came to know of the OIO only through an RTI and therefore the time to file appeal should have been counted from the date of receipt of RTI's reply from the department.

4. Personal hearing, in virtual mode, was held on 01.12.2021. Smt. Jayvanti Porwal, Applicant, appeared and reiterated the contents of the revision application. She

submitted that the offending goods were brought by her in exchange of old jewellery for which she had produced the bill, which was not taken on record. Sh. Jitendra Kumar, Superintendent, appeared for the Respondent department and pointed out that the Applicant, in her statement, had admitted that she had bought the offending goods and there is no claim of exchange therein. Further, she is a repeat offender. He, accordingly, supported the orders of the lower authorities.

5. The Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the Appeal of the Applicant as time-barred, holding that as per the provisions of Section 153(3) of Customs Act, 1962, the OIO dated 17.11.2017 was deemed to have been received by the Applicant herein at the expiry of the period normally taken by post. However, the Government finds <sup>that</sup> the OIO was passed by the original authority on 17.11.2017 whereas the new provisions of Section 153, that include new sub-section (3), were made effective from 29.03.2018 by virtue of Section 99 of the Finance Act, 2018 (13 of 2018). Thus, the Commissioner (Appeals) has relied upon the provisions that were not in existence at the time when the subject OIO came to be passed. As such, the Government holds that the Commissioner (Appeals) has erred in holding that the impugned OIO was deemed to have been delivered. Therefore, it would be in the interest of justice that the matter is remanded back to Commissioner (Appeals) to decide the appeal afresh, including the issue of limitation, keeping in view the legal provisions, as applicable.

6. Accordingly, the revision application is allowed by way of remand to the Commissioner (Appeals), with directions as above.

  
(Sandeep Prakash)

Additional Secretary to the Government of India


Ms. Jayvanti Porwal,  
Flat No. T1, 3rd Floor,  
No. 34, Thaneer Pandal, 3rd Street,  
Peelamedu, Coimbatore-641 004.

Order No. \_ 272\_/21-Cus dated 03-12-2021

Copy to:

1. The Commissioner of Customs (Airport & Admin.), NSCBI  
Airport, Kolkata – 700052.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom  
House, 15/1, Strand Road, Kolkata – 700001.
3. PA to AS(RA).
4.  Guard File.
5. Spare Copy.

ATTESTED

  
(Ashish Tiwari)

Assistant Commissioner (RA)