

**SPEED POST**



F. No. 372/17/B/2022-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue 08/09/22

Order No. 29/22-Cus dated 08-09-2022 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 No. KOL/CUS/Airport/AKR/203/2022 dated 31.03.2022 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Shyamal Bhowmick, Kolkata.

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

**ORDER**

A Revision Application No. 372/17/B/2022-RA dated 20.07.2022 has been filed by Sh. Shyamal Bhowmick, Kolkata (hereinafter referred to as the Applicant), against the Order-in-Appeal No. KOL/CUS/Airport/AKR/203/2022 dated 31.03.2022 passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original passed by the Additional Commissioner of Customs (Airport), Air Intelligence Unit Cell, Kolkata, bearing No. 12/2021/ADC dated 10.03.2021, wherein, 01 piece of gold bangle, 03 pieces of gold strips and 01 piece of gold belt buckle made of gold of foreign origin, collectively weighing 383.6 gms and totally valued at Rs. 14,65,352/-, and 19 pieces of diamonds, weighing 0.97 cents and valued at Rs. 19,400/-, recovered from the Applicant, were absolutely confiscated under Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. Besides, penalty of Rs. 3,75,000/- was also imposed on Sh. Shyamal Bhowmick under Sections 112(a) and 112(b) of the Customs Act, 1962.

2. Brief facts of the case are that the officers of Air Intelligence Unit(AIU), Customs, NSCBI Airport, Kolkata intercepted the Applicant herein who had arrived from Vientiane via Bangkok, on 27.09.2019, while he was passing through the Green Channel of NSCBI Airport, Kolkata. On being asked as to whether he was carrying any contraband or gold or gold items to which he replied in negative. Nothing incriminating was found during scanning of the baggage, however, during his personal search 01 piece of gold bangle, 03 pieces of gold strips and 01 piece of gold belt buckle made of gold of foreign origin, collectively weighing 383.6 gms and totally valued at Rs. 14,65,352/-, and 19 pieces of diamonds, weighing 0.97 cents and valued at Rs. 19,400/-, were recovered. The Applicant could not produce any licit documents in support of his possession, acquisition or legal importation of the recovered gold and diamonds. In his statement dated 27.09.2019, tendered under Section 108 of the Customs Act, 1962, the Applicant admitted that he did not possess any licit documents in support of possession, acquisition and importation of the said items recovered from him; that he had bought the recovered items from the local market of Vientiane, Laos with USD 1700, however, he did not have any purchase receipt;

and that he was aware that carrying/possessing and importation of gold in a concealed manner is prohibited. In his further statement dated 19.11.2019, the Applicant stated that he exchanged the old gold jewellery of his mother at the local shop i.e Sorpany Jewellery which he had taken from India in his previous visit; that he was unaware of the rules and regulations regarding Red Channel and Green Channel and thus did not declare the seized items in his possession; that he was unaware of the stones being diamonds as those were rough items bought from the shop he worked; and that he was supposed to make jewellery of seized items except buckle for his daughter who lived in Laos. The original authority, vide aforesaid Order-in-Original dated 10.03.2021, absolutely confiscated the recovered gold items and diamonds, under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. Penalty as mentioned in para 1, was also imposed on the Applicant under Section 112 (a) & 112(b) of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The instant revision application has been filed, mainly, on the grounds that the goods in question were licitly procured by him; that the impugned OIA was passed by the Commissioner (Appeals) without considering his representation dated 24.03.2022 wherein he had submitted the copies of invoices evidencing the purchase of the impugned items and, thus, the Commissioner(Appeals) had erred in not considering the purchase invoices; and that the goods being notified and dutiable cannot be ordered for absolute confiscation without granting the opportunity of redemption in terms of Section 125 of the Customs Act, 1962.

4. Personal hearing, in virtual mode, was held on 07.09.2022. Sh. Somnath Bera, Advocate, appeared for the Applicant and reiterated the contents of the revision application. He highlighted that the gold seized was replacement jewellery in lieu of jewellery taken abroad. The documents in this respect were placed before the Commissioner(A) who has not even dealt with the issue. None appeared for the Respondent department nor any request for adjournment was received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter.

5.2 The revision application has been filed with a delay of 04 days, which is attributed to postal delay. Delay is condoned.

5.3 It is contended by the Applicant that the Commissioner(Appeals) had passed the impugned OIA dated 31.03.2022 without considering the purchase invoices and other relevant documents that were submitted before the investigating authority and also before the Appellate Authority. The Applicant has, in this regard, placed on record a copy of letter dated 24.03.2022, which was received in the office of Commissioner(Appeals) on the same day as per receipt stamp. The Government observes that this relevant aspect has not been dealt with in the impugned OIA dated 31.03.2022. Therefore, it would be in the interest of justice that the matter is remanded to the Commissioner (Appeals) for deciding the appeal afresh after considering all contentions of the Applicant, including those raised in the letter dated 24.03.2022, and after following the principles of natural justice. All other issues raised are kept open for decision afresh.

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



(Sandeep Prakash)  
Additional Secretary to the Government of India

Sh. Shyamal Bhowmick,  
S/o Anil Bhowmick,  
R/o 38/1A/H/53, Manicktala Main Road  
Bagmari, Kankurgachi, Kolkata-700054

Order No. 29/22-Cus dated 08-09-2022

Copy to:

1. The Pr. Commissioner of Customs, Airport & ACC, NSCBI Airport, Kolkata-700052.
2. The Commissioner of Customs (Appeals), 15/1, Strand Road, Kolkata-700001.
3. Sh. Somnath Bera, Advocate, Near Jagacha Bayamsamiti, H.N Nag Road, Jagacha, Howrah-711112.
4. PA to AS(RA).

5. Guard File.  
6. Spare Copy.

ATTESTED

LR

08.09.22

(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