

SPEED POST



F. No. 373/101/B/2015-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...03/10/22

Order No. 306/22-Cus dated 03-10-2022 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 Applications filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal 79/2015 dated 22.01.2015 passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Maddi Narayana, Vijayawada

Respondent : Pr. Commissioner of Customs, Air Cargo & Airport, Bengaluru.

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ORDER

A Revision Application, bearing No. 373/101/B/2015-RA dated 18.03.2015, has been filed by Sh. Maddi Narayana, Vijayawada (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 79/2015 dated 22.01.2015, passed by the Commissioner of Customs (Appeals), Bangalore. The Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, Kempegowda International Airport, Bangalore bearing no. 100/2014 dated 10.04.2014, vide which 01 nickel coated gold buckle brought by the Applicant, weighing 236.50 grams and valued at Rs. 6,85,613/-, had been absolutely confiscated under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962. Besides, penalty of Rs. 60,000/- was imposed on the Applicant, under Section 112(a) and penalty of Rs. 20,000/- was imposed under Section 114AA of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived, from Muscat, at Bangalore, on 04.03.2014, while he was exiting through the Green Channel of Kempegowda International Airport, Bangalore. The hand bag and check-in bag was examined and only clothes and personal effects were found. However, on his personal search he was found to be wearing Nickel coated Metal Buckle which appeared to be made of gold. The gold buckle was found to weigh 237.60 gms. The gold buckle was subjected to 'Acid Test Method' on 01.04.2014 by the approved valuer to ascertain the purity of the gold and he certified that it was 24 Karat/995 purity, weighing 236.50 gms (the original weight was 237.60 gms which was reduced to 236.50 gms after the Acid Test Method) and valued the gold buckle at Rs. 6,85,613/-. The Applicant, in his statements dated 04.03.2014 and 09.04.2014, recorded under Section 108 of the Customs Act, 1962, *inter alia*, stated that he was exiting the green channel without declaring the gold buckle attached to black colour leather belt worn around his waist to the Customs with an intention to evade payment of Customs Duty; that he declared the value of the goods imported as 'NIL' in the Customs Declaration Form; that he left India on 28.02.2014 for Dubai and returned to Bangalore on 04.03.2014; and that he was aware of the fact that carrying gold without declaring to the Customs department is an offence under the law and he was carrying it with an intention to evade payment of Customs duty.

3. The revision application has been filed mainly, on the grounds that there is no mis-declaration and concealment and he made a true declaration; that re-export of the gold was not considered by the lower authorities and value adopted by the lower authorities was on higher side; and that Applicant opted for Red channel to prove his bonafides. Accordingly, it has been prayed that re-export may be allowed and penalty imposed may be waived.

4. Personal hearing was fixed on 30.09.2022. No one appeared for either side nor any request for adjournment has been received. The Advocate of Respondent, vide letter dated 22.10.2021, has waived the personal hearing. Hence, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. It is observed that the Applicant did not declare the gold item brought by him as stipulated under Section 77 of Customs Act, 1962, to the customs authorities at the airport and a 'NIL' declaration was made in his Customs Declaration Form. Further, the Applicant admitted the recovery of gold item from him and the fact of non-declaration in his statements dated 04.03.2014 and 09.04.2014, tendered under Section 108 of Customs Act, 1962.

6. As per Section 123 of Customs Act 1962, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. The Applicant did not declare the gold item as stipulated under Section 77 of the act, *ibid*. Further, the Applicant was exiting the Green Channel when he was intercepted. The gold buckle was nickel coated to avoid detection. Hence, the contention of the Applicant that true declaration was made and that he opted for Red Channel are factually incorrect. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Keeping in view the facts of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government holds that the lower authorities have correctly held the goods to be liable to confiscation under Section 111 of the Act, *ibid*.

7. Other contention of the Applicant is that re-export of gold was not considered. Section 80 of the Customs Act, 1962, reads as follows:

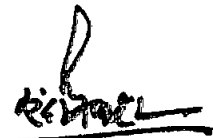
"Temporary detention of baggage. - Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the 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 authorised by him and leaving India or as cargo consigned in his name"

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 held, the Applicant had made no declaration in respect of the subject goods. Hence, there is no infirmity in the orders of lower authorities, on this count.

8. As far as the contention of Applicant regarding the value adopted by the lower authorities is concerned, the Government observes that approved valuer had valued the gold buckle and no material has been placed on record to challenge the same. Hence, this contention is nothing but a bald assertion, which does not merit consideration.

9. In the facts and circumstances of the case, the penalty imposed is just and fair.

10. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


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Poola Bhavi Street, Vijayawada-520001

Order No. 306 /22-Cus dated 03-10-2022

● Copy to:

1. The Commissioner of Customs (Appeals), C.R Building, P.B No. 5400, Queens Road, Bengaluru-560001.
2. The Pr. Commissioner of Customs, Airport & Air Cargo Complex, SATS Air Freight Terminal, Kempegowda International Airport, Bengaluru-560030
3. Sh. K Mohamed Ismail, Advocate & Notary Public, New No. 102, Linghi Chetty Street, Chennai-600001.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy

ATTESTED



03.10.22

(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

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