

SPEED POST



F. No. 373/41/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..07/10/22

Order No. 312 /22-Cus dated 07-10-2022 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 C.Cus-I No. 726/2015 dated 30.11.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Pradeep Kumar, Colombo

Respondent : Pr. Commissioner of Customs, Anna International Airport, Chennai.

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ORDER

A Revision Application, bearing No. 373/41/B/2016-RA dated 10.03.2016, has been filed by Sh. Pradeep Kumar, Colombo (hereinafter referred to as the Applicant), against the Order-in-Appeal C.Cus-I No. 726/2015 dated 30.11.2015, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, Anna International Airport, Chennai, bearing no. 299/2015-16-Airport dated 11.09.2015, vide which 01 crude gold chain brought by the Applicant, weighing 319.50 grams and valued at Rs. 8,03,862/-, had been absolutely confiscated under Section 111(d) & 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 85,000/- was imposed on the Applicant, under Section 112(a) of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived, from Colombo, on 10.08.2015, at the exit gate of the arrival hall after passing through the Green Channel of Anna International Airport, Chennai. His baggage was examined and personal effects were found. However, on his personal search 01 yellow coloured metal chain was recovered from left pocket of the shirt worn by him which appeared to be made of gold. The gold appraiser certified the recovered yellow coloured metal chain to be semi-finished gold chain of 24 carat purity, weighing 319.50 gms and also appraised the value of the same at Rs. 8,03,862/-. The Applicant, in his statement recorded immediately thereafter under Section 108 of the Customs Act, 1962, *inter alia*, stated that he had declared the value of the dutiable goods brought by him as 'NIL' in his Customs Declaration Card; that he was not in possession of any legal/valid documents for the legal import of the gold or any foreign/Indian currency to pay customs duty; that the gold was given to him by an unknown person outside Colombo Airport for handing over the same to the unknown person outside Chennai Airport; that he was offered Rs. 10,000/- for smuggling the gold by concealing without declaring to Customs; and that he has committed the offence for monetary benefit and requested to be pardoned. In the Personal Hearing granted to the Applicant on 07.09.2015, he stated that it was his gold; and that he was wearing the chain. He retracted his statement and requested for re-export as he is a foreigner.

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 a higher side; that Applicant opted for Red Channel to prove his bonafides; and that the Applicant is an eligible passenger to import gold upto 1 Kg. Accordingly, it has been prayed that re-export may be allowed and penalty imposed may be waived.

4. Personal hearing was fixed on 24.08.2021, 31.08.2021 and 06.10.2022. No one appeared for either side nor any request for adjournment has been received. Sh. K. Mohamed Ismail, Advocate of Applicant, 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 was intercepted at the Exit Gate after passing through the Green Channel. He 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 statement dated 10.08.2015, tendered under Section 108 of Customs Act, 1962. Therefore, it is incorrect of the Applicant to contend that a true declaration was made or that he had opted for Red Channel.

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 intercepted at the exit gate after passing through the Green Channel. No document evidencing ownership and licit purchase have also been placed on record. 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. 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 chain and no material has been placed on record to challenge the same. Hence, this contention also does not merit consideration.

8. Further, as per Notification No. 12/2012 dated 17.03.2012, as amended, the term 'eligible passenger' is defined as a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the 'eligible passenger' during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits. In this case, no material has been placed on record to substantiate that the Applicant was an 'eligible passenger' in terms of the said notification. Further, this contention does not appear to have been raised before the original authority. Hence, the subject contention cannot be accepted.

9. 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 not made a true declaration under Section 77. Hence, there is no infirmity in the orders of lower authorities, on this count.

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

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



(Sandeep Prakash)

Additional Secretary to the Government of India

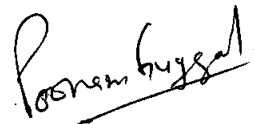
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Order No. 312/22-Cus dated 07-10-2022

Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001
2. The Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai-600027
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



(Poonam Guggal)
Supdt (R.A.)