

SPEED POST



F. No. 373/59/B/2017-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... 7/10/22

Order No. 313 /22-Cus dated 7-10-2022 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. 49/2017 dated 21.03.2017 passed by the Commissioner of Customs (Appeals-I&II), Chennai.

Applicant : Sh. Pradeep Kumar Selladurai, Colombo

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

.....

ORDER

A Revision Application, bearing No. 373/59/B/2017-RA dated 21.04.2017, has been filed by Sh. Pradeep Kumar Selladurai, Colombo (hereinafter referred to as the Applicant), against the Order-in-Appeal C.Cus-I No. 49/2017 dated 21.03.2017, passed by the Commissioner of Customs (Appeals-I&II), Chennai. The Commissioner (Appeals) has upheld the Order-in-Original of the Additional Commissioner of Customs, Anna International Airport, Chennai, bearing no. 154/2016 dated 22.11.2016, except to the extent of setting aside the penalty imposed under Section 114AA of the Customs Act, 1962. Vide the aforementioned Order-in-Original 01 gold chain brought by the Applicant, weighing 200 grams and valued at Rs. 6,08,200/-, had been absolutely confiscated under Section 111(d) & 111(l) of the Customs Act, 1962. Besides, penalties of Rs. 80,000/- & Rs. 10,000/- were imposed on the Applicant, under Sections 112(a) & 114AA of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived, from Colombo, on 09.05.2016, at the exit gate of the arrival hall after passing through the Green Channel of Anna International Airport, Chennai. On his personal search 01 gold chain of 24 carat purity, weighing 200 gms was recovered from his inner pant pocket. The Applicant was not in possession of any valid document for the legal import of the gold item into India and also had no foreign currency to pay the customs duty. The Applicant, in his statement recorded under Section 108 of the Customs Act, 1962, *inter alia*, stated that he intended to clear the gold by way of concealment for monetary benefit of Rs. 10,000/-; and that he was just a carrier of the gold and not the owner of the gold.

3. The revision application has been filed mainly, on the grounds that there is no mis-declaration and concealment and the Applicant 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; and that Applicant opted for Red Channel to prove his bonafides. Accordingly, it has been prayed that re-export may be allowed.

4. Personal hearing was fixed on 15.11.2018, 22.11.2018 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, has waived the personal hearing, vide letter dated 22.10.2021. 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. The Applicant admitted the recovery of gold item from him and that he intended to clear the gold by way of concealment for monetary benefit of Rs. 10,000/-. 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 no material has been placed on record to challenge that the value adopted by the lower authorities is on a higher side. It is, therefore, nothing but a bald assertion. Hence, this contention also does not merit consideration.

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

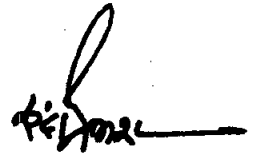
"Temporary detention of baggage. - Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the

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 vs Commissioner of Customs (P), Lucknow {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.

9. The Government observes that the Applicant herein is a repeat offender. He had been found involved in smuggling of gold, in an earlier case, at Chennai airport itself on 10.08.2015. This case has culminated in GoI Order No. 312/22-Cus dated 07.10.2022 against the Applicant. Therefore, no case for relief in penalty amount is made out.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Pradeep Kumar Selladurai
C/o Sh. K. Mohamed Ismail, Advocate
No. 102, Old No. 271, Linghi Chetty Street
Chennai-600001

Order No. 313/22-Cus dated 7-10-2022

Copy to:

1. The Commissioner of Customs (Appeals-I&II), 60, Rajaji Salai, Custom House, Chennai-600001
2. The Pr. Commissioner of Customs, Airport, New Customs House, 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



07.10.22

(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