

**SPEED POST**



F. No. 373/42/B/2016-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue.....28/10/22

Order No. 330/22-Cus dated 28-10-2022 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. 1/2016 dated 25.01.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Anish Ahamed, Ramnad

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

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**ORDER**

A Revision Application, bearing No. 373/42/B/2016-RA dated 10.03.2016, has been filed by Sh. Anish Ahamed, Ramnad (hereinafter referred to as the Applicant), against the Order-in-Appeal C.Cus-I No. 1/2016 dated 25.01.2016, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs(Airport), Anna International Airport, Chennai bearing No. 285/2015-16-Airport dated 11.09.2015, vide which 01 gold bar brought by the Applicant, weighing 500 grams and valued at Rs. 13,67,500/-, had been absolutely confiscated under Sections 111(d) and 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 1,25,000/- was also imposed on the Applicant, under Section 112(a) of the Act, ibid.

2. Brief facts of the case are that the Applicant arrived from Kuala Lumpur at Chennai airport, on 11.05.2015, and was intercepted by the Customs officers while he was walking out after passing through the Green Channel. Upon questioning as to whether he was carrying any gold/crude gold either in his baggage or in his person, he replied in negative and produced the Customs Declaration Card, wherein he had declared the value of the goods brought by him as Rs. 2,000/-. Upon examination of his baggage, the Customs Officers found only his personal effects, valued at Rs. 2,000/-. However, upon the search of his person one gold bar of 24 carat purity, weighing 500 gms, valued at Rs. 13,67,500/- was found in a maroon colour zipper pouch concealed inside the underwear worn by him. The Applicant did not declare the possession of gold bar in Customs Declaration Form. The Applicant, in his statement, recorded under Section 108 of the Customs Act, 1962, immediately after the seizure, inter-alia, stated that on the day of his journey to Chennai on 10.05.2015 while he was waiting to board the flight, an unknown person named Sh. Umar approached him and asked him to carry the gold cut bar weighing 500 gms to Chennai and hand it over to his associate outside Chennai Airport who would identify him with the help of the shirt he wore and give him a monetary benefit of Rs. 20,000/-; that for the sake of money he agreed to smuggle the gold cut bar into India without the knowledge of Customs; that he accepted the offence committed by him and requested for a lenient view in the matter. Vide letter dated 15.05.2015, the Applicant stated that he came from Malaysia to India on 11.05.2015 and brought 500 gms of gold in his pant

pocket without any illegal and criminal intention and that he is an innocent person; that the gold was seized from him; that he will return to Malaysia on 27.05.2015; that he brought the gold for his relative's daughter's marriage; and that he is ready to pay duty for the seized gold or the same may be allowed for re-export.

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; that Applicant opted for Red Channel to prove his bonafides; and that he is an eligible passenger to import gold upto 1 Kg. Accordingly, it has been prayed that re-export may be allowed and personal penalty be set aside.

4. Personal hearing was fixed on 28.10.2022. No one appeared for either side nor any request for adjournment has been received. The Advocate of Respondent 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 while he was walking out after passing through the Green Channel. The gold was found in a pouch, which was concealed inside the underwear worn by the Applicant. These facts have been recorded in the presence of independent witnesses. Further, the Applicant himself had, in his statement, admitted to the recovery of gold from him and that he intended to clear the gold by way of concealment for monetary benefit of Rs. 20,000/-. Though this statement was subsequently retracted, the contents of the statement are corroborated by the search proceedings. Therefore, it is incorrect of the Applicant to contend that a true declaration was made; or that he had opted for Red Channel; or that there was no concealment.

6. 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 bar 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.

7. 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. The original authority has correctly observed that one of the conditions of the aforesaid notification is that duty has to be paid in convertible foreign currency and as no foreign currency was found on the Applicant, he was in no position to claim the benefit of notification. Further, as per proviso to condition 35 of the said notification, the Applicant was required to make a declaration in this regard, which has also not been done in this case. Hence, the contention of the Applicant that he was eligible for benefit of the Notification No. 12/2012-Cus dated 17.03.2012 cannot be accepted.

8. Other contention of the Applicant is that re-export of gold should be allowed. The Government finds that a specific provision regarding re-export of baggage items has been made in Section 80 of the Customs Act, 1962, which 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 the

Applicant had made no declaration in respect of the subject goods, the re-export of subject goods cannot be considered.

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

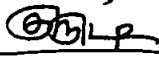
Sh. Anish Ahamed  
East Street, Irumeni  
Ramnad District  
Tamil Nadu

Order No. 330/22-Cus dated 28-10-2022

Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001
2. The Pr. Commissioner of Customs, Airport, New Custom House, ACC, GST Road, Meenambakkam, Chennai-600027
3. Sh. K. Mohamed Ismail, BABL, Advocate & Notary Public, New No. 102, Linghi Chetty Street, Chennai-600001.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy

ATTESTED

  
28.10.22

(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