

SPEED POST



F. No. 373/43/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 28/10/22

Order No. 331/22-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 Application filed, under Section 129-DD of the Customs Act 1962 against the Order-in-Appeal C.Cus-I No. 728/2015 dated 30.11.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Peer Mohamed, Nagapattinam

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

ORDER

A Revision Application, bearing No. 373/43/B/2016-RA dated 10.03.2016, has been filed by Sh. Peer Mohamed, Nagapattinam (hereinafter referred to as the Applicant), against the Order-in-Appeal C.Cus-I No. 728/2015 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 (Airport), Anna International Airport, Chennai, bearing No. 289/2015-16-Airport dated 11.09.2015, vide which 02 gold bars brought by the Applicant, totally weighing 233 grams and valued at Rs. 6,32,828/-, had been absolutely confiscated under Sections 111(d) and 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 60,000/- 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 Dubai at Chennai airport, on 12.06.2015, and was intercepted by the Customs officers at the exit point. Upon questioning as to whether he was carrying any gold/contraband either in his baggage or in his person, he replied in negative. He had filled up the value of the dutiable goods brought by him as NIL in his Customs Declaration Card. Upon examination of his baggage, the Customs Officers found only his personal effects. However, upon the search of his person 02 gold bars of 24 carat purity, weighing 116.5 gms each, totally weighing 233 gms and totally valued at Rs. 6,32,828/- were found concealed in his pant pocket. 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 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 a person outside Dubai airport while he was proceeding for checking in for flight; that he was offered Rs. 5,000/- for carrying the gold bars and to hand over the same to a receiver outside Chennai airport, who would identify him; that he agreed for the offer and kept the gold bars in his pant pocket; that he does not know the identity of the receiver or the person who gave him the gold; and that he committed the offence for monetary benefit and requested to be pardoned.

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 the value adopted by the lower authorities was on a higher side; that Applicant opted for Red Channel to prove his bonafides; that he is the absolute owner of the gold and bought it for his sister's marriage; and that he is an eligible passenger to import gold up to 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 18.08.2021, 25.08.2021 & 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 at the exit gate. The Applicant had declared the value of dutiable goods as NIL in his Customs Declaration Card. He himself had admitted to the recovery of gold bars from him and that he intended to clear the gold by way of concealment for monetary benefit of Rs. 5,000/-. 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 totally unsubstantiated and, hence, does not merit consideration.

7. The other contention of the Applicant that he is the absolute owner of the gold and he bought it for his sister's marriage appears to be nothing but an afterthought as he has not produced ^{document} establishing ownership of gold nor any foreign currency was found from him to pay customs duty. As such, this contention of the Applicant also cannot be accepted.

8. It is further contended that the Applicant is eligible for the benefit of Notification No. 12/2012 dated 17.03.2012, as amended. The Government observes that the Commissioner (Appeals) has examined this issue carefully and has found that the Applicant was not eligible for the said benefit as he has stayed abroad only for 04 months against the requirement of minimum 06 months. Nothing has been placed on record to rebut these findings of Commissioner (Appeals). Hence, the contention of the Applicant that he was eligible for benefit of the aforesaid notification cannot be accepted.

9. Other contention of the Applicant is that re-export of gold was not considered. The Government observes that specific provisions have been made in Section 80 of the Customs Act, 1962, in respect of re-export of baggage articles. Section 80 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 found, the Applicant had made no declaration in respect of the subject goods, the re-export of subject goods cannot be considered.

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

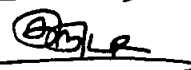
Sh. Peer Mohamed
1/73 Main Road, Madapuram
Akkure, Sembanar Kovil
Tharangampadi, Nagapattinam
Tamil Nadu-609301

Order No. 331/22-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