

SPEED POST



F. No. 373/210/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.....09/11/22

Order No. 341/22-Cus dated 09-11-2022 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 90/2016-17 dated 29.08.2016 passed by the Commissioner of Customs (Appeals), Cochin.

Applicant : Sh. Mohamed Magbool Ahamed Lebbe, Sri Lanka

Respondent : The Commissioner of Customs, Custom House, Cochin

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ORDER

A Revision Application, bearing No. 373/210/B/2016-RA dated 18.10.2016, has been filed by Sh. Mohamed Magbool Ahamed Lebbe, Sri Lanka (hereinafter referred to as the Applicant), against the Order-in-Appeal 90/2016-17 dated 29.08.2016, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has upheld the Order-in-Original of the Joint Commissioner of Customs, Custom House, Cochin, bearing no. 21/2015 dated 31.01.2015. Vide the aforementioned Order-in-Original, 01 gold link and 01 'O' ring of 24 carat purity, brought by the Applicant, totally weighing 277.850 grams and totally valued at Rs. 7,58,530.50/-, had been absolutely confiscated under Sections 111(d), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalty of Rs. 70,000/- was also imposed on the Applicant, under Sections 112(a) & (b) of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived, from Colombo, on 06.01.2015, near the exit gate of the arrival hall of Cochin International Airport, Nedumbassery, Cochin. On his personal search, 01 gold link and 01 'O' ring of 24 carat purity, totally weighing 277.850 gms and totally valued at Rs. 7,58,530.50/-, were found concealed in tissue paper held in his hand. The Applicant was not in possession of any valid document for the legal import of the gold item into India. In the Customs Declaration Form the Applicant had not declared anything. The Applicant, in his statement recorded under Section 108 of the Customs Act, 1962, *inter alia*, stated that he had been engaged in carrying textile articles to Colombo from Chennai; that during his present journey one of his friends named Shifan, who was doing jewellery business at Sri Lanka, offered him Rs. 2,000/- Sri Lankan Rupees for carrying some gold for selling the same at Chennai; that he accepted the offer as he was in dire need of money; and that he took over the gold and concealed it in his hand wrapped in tissue paper.

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 and penalty may be set aside.

4. Personal hearing was fixed on 25/26.10.2018, 15.10.2019, 20.08.2021, 27.08.2021 and 09.11.2022. No one appeared for either side nor any request for adjournment has been received. Sh. K. Mohamed Ismail, Advocate for the 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 of the Arrival Hall. The Applicant admitted the recovery of gold items from him and that he intended to clear the gold by way of concealment for monetary benefit of 2000/- Sri Lankan Rupees. In the Customs Declaration Form the Applicant had declared nothing. 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 far as the contention of Applicant regarding the value adopted by the lower authorities is concerned, the Government observes that the value was appraised by the approved Gold Assayer. No material has been placed on record to challenge that the value so determined is on a higher side. It is, therefore, nothing but a bald assertion. Hence, this contention also does not merit consideration.

7. 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 *ibid*. Consequently, the Applicant has been correctly held to be liable to penalty under Section 112 *ibid*.

8.1 Other contention of the Applicant is that re-export of gold was not considered. The Government observes that a specific provision regarding re-export of baggage articles has been made under 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."

8.2 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 penalty imposed on the Applicant herein is just and fair in the facts and circumstances of the case.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

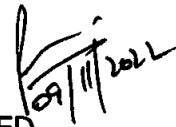
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Order No. 341/22-Cus dated 09-11-2022

Copy to:

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2. The Commissioner of Customs, Custom House, Willingdon Island, Cochin-682009
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



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