

SPEED POST



F. No. 373/94/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... 11/11/22

Order No. 344/22-Cus dated 11-11-2022 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 Airport Cus. No. 84/2017 dated 05.05.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Abdul Rasull Bin Abdul Razak, Kualalumpur, Malaysia

Respondent : Pr. Commissioner of Customs, Airport, Chennai

ORDER

A Revision Application bearing No. 373/94/B/2017-RA dated 19.06.2017 has been filed by Sh. Abdul Rasull Bin Abdul Razak, Kuala Lumpur, Malaysia (hereinafter referred to as the Applicant) against the Order-in-Appeal Airport Cus. No. 84/2017 dated 05.05.2017, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Additional Commissioner of Customs (Adjudication-Air), bearing No. 252/2016-17 dated 30.01.2017, vide which 14 numbers of crude gold bangles, 02 numbers of crude gold rings and 04 numbers of crude gold chains, totally weighing 1454 grams, valued at Rs. 43,88,172/-, recovered from the Applicant, were confiscated absolutely under Section 111(d) and 111(l) of the Customs Act, 1962. Besides, penalties of Rs. 4,35,000/- & Rs. 5,000/- were also imposed on the Applicant herein under Sections 112(a) & 114AA of the Customs Act, 1962 respectively. The Commissioner (Appeals) has, however, set aside the penalty of Rs. 5,000/- imposed under Section 114AA.

2. Brief facts of the case are that the Applicant, who is a Malaysian citizen, arrived, on 24.05.2016, at Chennai Airport from Malaysia and was intercepted at the exit gate. On being asked by the Customs officers whether he was carrying any gold with him, he replied in negative. On search of his person and baggage, 14 numbers of crude gold bangles, 02 numbers of crude gold rings and 04 numbers of crude gold chains, totally weighing 1454 grams, were recovered from him. The value of the seized gold items was appraised at Rs. 43,88,172/-. The Applicant in his voluntary statement dated 24.05.2016, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of gold from him and stated that the recovered gold did not belong to him and was given to him by an unknown person at Kuala Lumpur airport for handing over to a person outside the Chennai airport; that he was well aware that smuggling of gold by non-declaring to Customs and without any valid permit is an offence; he further admitted his offence and stated that he did it for a monetary consideration of Rs. 20,000/- only.

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 02.11.2021, 09.11.2021, and 11.11.2022. 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 20.11.2018. 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 these items by way of concealment for monetary benefit of Rs. 20,000/-. The Applicant had not declared the gold items to the Customs Authorities as required under Section 77 of the Customs Act, 1962. Even after being asked orally, the Applicant failed to make the requisite declaration. 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 Appraiser. No material has been placed on record to challenge the value so determined. The subject contention therefore, is unsubstantiated and, as such, 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 items carried by him, 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 should be 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

Sh. Abdul Rasul Bin Abdul Razak
C/o Sh. K. Mohamed Ismail, B.A.B.L.,
Advocate & Notary Public,
New No. 102, Lingi Chetty Street,
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Order No. 344/22-Cus dated 11-11-2022

Copy to:

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2. The Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport, New Custom House, Meenabakkam, Chennai-600027
3. Sh. K. Mohamed Ismail, B.A.B.L, Advocate & Notary Public, New No. 102, Lingi Chetty Street, Chennai-600001
4. PS to AS(RA)
5. Guard file
6. Notice Board

7. Spare Copy

ATTESTED


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