

**SPEED POST**



F. No. 373/35/B/2017-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. 15/11/22

Order No. 345/22-Cus dated 15-11-2022 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 No. MAD-CUS-000-APP-128-16 dated 16.11.2016 passed by the Commissioner of Central Excise (Appeals-I), Madurai.

Applicant : Sh. Karuppaiya, Pudukkottai

Respondent : Commissioner of Customs, Tiruchirapalli

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**ORDER**

A Revision Application, bearing No. 373/35/B/2017-RA dated 13.02.2017, has been filed by Sh. Karuppaiya, Pudukkottai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. MAD-CUS-000-APP-128-16 dated 16.11.2016, passed by the Commissioner of Central Excise (Appeals-I), Madurai. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Joint Commissioner of Customs (Airport), Madurai, bearing No. MAD-CUS-000-JTC-13-2015 dated 19.11.2015. Vide the aforementioned Order-in-Original assorted gold jewellery of 22 carat and 01 gold bar, totally weighing 251.23 gms and collectively valued at Rs. 7,33,041/-, had been absolutely confiscated under Sections 111(d), 111(l) and 111(m) of the Act, *ibid*. Besides, penalty of Rs. 75,000/- was also imposed on the Applicant, under Section 112(a) of the Act, *ibid*.

2. Brief facts of the case are that, on 10.03.2014, the Applicant arrived at Madurai airport from Singapore and was intercepted by the Customs officers at the exit point of the arrival hall of Madurai airport when he had cleared immigration and attempted to pass through the Green Channel. Upon questioning as to whether he was carrying any gold/contraband goods either in his baggage or in his person, he replied in negative. Upon examination of his person and checked-in baggage, the Customs Officers found assorted gold jewellery and 01 gold bar wrapped with adhesive tapes inside his black colour Bermuda type trouser kept inside his baggage. The Government approved Jewellery Valuer collectively valued the aforementioned gold items to be at Rs. 7,33,041/-. The Applicant, in his statement dated 10.03.2014, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that in Singapore, some building contract worker met him and asked him to take gold jewellery and one gold bar with him and to deliver them to a person who would contact him through his phone at Madurai; that for the said work, the agent had offered him Rs. 15,000/- and he accepted to do the work and packed the gold jewellery & one gold bar given by the agent and concealed them in the black colour Bermuda type trouser; and that he knew it was an offence to smuggle gold by concealing it and without declaring by not paying the Customs duty involved.

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 jewellery was not considered by the lower authorities; that value adopted by the lower authorities was on the 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 personal penalty be set aside.

4. Personal hearing was fixed on 15.11.2022. No one appeared for either side nor any request for adjournment has been received. The Advocate for the Applicant has waived 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 point of the arrival hall of Madurai airport. He admitted the recovery of assorted gold jewellery and 01 gold bar from him and that he intended to clear the gold items by way of concealment for monetary benefit of Rs. 15,000/-. 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 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 Jewellery Valuer. No material has been placed on record to challenge that the value so determined is on a higher side. The subject contention is, therefore, liable to be rejected as unsubstantiated.

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 as required under Section 77 of the act, *ibid*. Further, the Applicant was intercepted while he was crossing the Green Channel. No documents evidencing licit possession of the goods have 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*.

8.1 Other contention of the Applicant is that re-export of gold was not considered. The Government finds 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 {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, the Applicant had made no declaration in respect of the subject goods. Hence, there is no infirmity in the orders of lower authorities, on this count as well.

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. Karuppaiya  
S/o Chockalingam, No.4-108A,  
Kulathupatti Post, Thirumayam Taluk  
Pudikottai District-622507

Order No. 345/22-Cus dated 15-11-2022

Copy to:

1. The Commissioner of Central Excise (Appeals-I), Lal Bahadur Shastri Marg, C.R Building, Madurai-625002.
2. The Commissioner of Customs, No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Sh. K. Mohamed Ismail, BA., BL, Advocate & Notary Public, New No. 101, Linghi Chetty Street, Chennai-600001.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



15.11.22

(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