

SPEED POST



F. No. 373/60/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.....16/11/22

Order No. 348/22-Cus dated 16-11-2022 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. VIZ-CUSTM-000-APP-125-16-17 dated 28.02.2017 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam.

Applicant : Sh. Murugaiyan Selvam, Singapore

Respondent : Pr. Commissioner of Customs, Visakhapatnam

ORDER

A Revision Application, bearing No. 373/60/B/2017-RA dated 21.04.2017, has been filed by Sh. Murugaiyan Selvam, Singapore (hereinafter referred to as the Applicant), against the Order-in-Appeal No. VIZ-CUSTOM-000-APP-125-16-17 dated 28.02.2017, passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Additional Commissioner of Customs, Custom House, Visakhapatnam, bearing No. 09/2016 dated 09.02.2016. Vide the aforementioned Order-in-Original, 02 gold biscuits and 02 gold chains, totally weighing 361.400 gms and collectively valued at Rs. 8,94,664/-, had been absolutely confiscated under Sections 111(d), 111(i) and 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 90,000/- was also imposed on the Applicant herein, under Section 112(a) & (b) of the Act, *ibid*.

2. Brief facts of the case are that, on 02.06.2015, the Applicant arrived at Visakhapatnam International Airport from Dubai and was intercepted by the Customs officers while attempting to exit the Customs gate through Green Channel. Upon questioning as to whether he was carrying any 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 01 gold chain worn by him around his neck, 01 gold chain, broken into three pieces, hidden in his pant pocket and 02 gold biscuits covered with black cellophane tape in two capsules concealed in his rectum. The Government approved gold assayer certified that collectively the gold items weighed 361.400 gms and collectively valued the aforementioned gold items to be at Rs. 9,80,580/-. Based on the facts, a Show Cause Notice dated 13.11.2015 was issued to the Applicant. The matter was thereafter decided by the original authority vide OIO dated 09.02.2016. Appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), vide the impugned OIA.

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 15.11.2018, 22.11.2018 & 16.11.2022. No one appeared for the Applicant nor any request for adjournment has been received. The Advocate for the Applicant has waived personal hearing, vide letter dated 22.10.2021. In the hearing held, in virtual mode, on 16.11.2022, Sh. Jagan Mohan K, A.C, appeared for the Respondent department and furnished a copy of OIO No. 09/2016 dated 09.02.2016.

He supported the orders of the lower authorities. 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 attempting to exit the Customs gate through Green Channel of Visakhapatnam International Airport. 02 gold bars were concealed in his rectum whereas 01 gold chain was found in the form of broken pieces inside the pant pocket. Manner of concealment itself belies the contention that a true declaration was made or that the Applicant 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. 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. Further, it is a case of rectum concealment. Therefore, the intention to smuggle is manifest. 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*. Consequently, the penalty has also been correctly imposed on the Applicant, under Section 112 *ibid*.

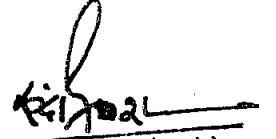
8.1 Other contention of the Applicant is that re-export of gold was not considered. The Government finds that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Customs Act, 1962, which reads as follows:

"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 ibid. In this case, the Applicant had made no declaration in respect of the subject goods. Further, the Hon'ble Delhi High Court has, in the case of Jasvir Kaur vs UOI {2009 (241) ELT 521 (Del.)}, held that re-export "cannot be asked for as of right.....The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to re-export." Hence, there is no infirmity in the orders of lower authorities, in this respect 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

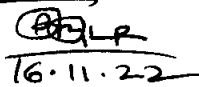
Sh. Murugaiyan Selvam
Singapore Passport No. E5552842H
No. Apt Blk 65
Kallang Bahru, #5-339
Singapore-330065

Order No. 348/22-Cus dated 16-11-2022

Copy to:

1. The Commissioner of Customs, Central Excise & Service Tax(Appeals), 4th Floor, Custom House, Port Area, Visakhapatnam-530035.
2. The Pr. Commissioner of Customs, Custom House, Port Area, Visakhapatnam-530035.
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



(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