

**SPEED POST**



F. No. 373/01/B/2018-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...09/12/22.....

Order No. 376/22-Cus dated 09-12-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 501/2017 dated 26.09.2017 passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Mahesh Vishandas Balwani, Thane.

Respondent : Pr. Commissioner of Customs, Kempegowda International Airport, Bengaluru.

**ORDER**

A Revision Application No. 373/01/B/2018-RA dated 04.01.2018 has been filed by Sh. Mahesh Vishandas Balwani, Thane (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 501/2017 dated 26.09.2017, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original, passed by the Joint Commissioner of Customs, Kempegowda International Airport, Bengaluru, bearing no. 11703/2016-17 (AP-ADM) dated 28.09.2016, wherein, 04 cut pieces of gold having 24 Karat/99.9% purity, weighing 513.180 gms, valued at Rs. 13,79,428/-, recovered from the Applicant herein were confiscated absolutely under Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. Besides, penalties of Rs. 4,50,000/- & Rs. 2,75,000/- were also imposed on the Applicant under Section 112 and 114AA the Act, *ibid*.

2. Brief facts of the case are that the Applicant arrived, on 14.10.2015, at Kempegowda International Airport, Bengaluru, from Colombo. He was intercepted by the Customs officers at the Customs arrival. He had not declared any value of the dutiable goods carried by him on Customs Declaration Form. Upon enquiry he informed that he had nothing valuable to declare to Customs. On examination of his baggage, nothing incriminating was found, however, upon examination of his person through Hand-held Metal Detector the presence of metallic object in his body was confirmed. After sustained questioning, the Applicant admitted that he had concealed gold in his rectum. Thereafter, 04 cut pieces of gold of 24 Karat/99.9% purity, collectively weighing 513.180 gms, wrapped in black insulation tape, valued at Rs. 13,79,428/-, were recovered, which were concealed in his rectum. In his statement dated 14.10.2015, tendered under Section 108 of Customs Act, 1962, the Applicant stated that he is into trading of bedsheets, fabrics and other branded readymade garments of high quality; that in Bangkok, he purchased the 04 cut pieces of gold from a shop called 'Candy' situated at Phorath Road, Bangkok; that he did not have any bills for that purchase; that after purchasing gold, he prepared 02 packets of 02 cut gold pieces each and covered them with black carbon paper and further with black adhesive tape and made them into a cylindrical shape; that he inserted the two

packets containing gold in his rectum in a toilet at Sri Lankan airport; that he had purchased the gold to sell the same for a profit at Mumbai through agents who would have arranged for purchase of smuggled gold; that he had intention of saving money for future use of his daughter's marriage; that he was aware that he was not eligible to bring gold into India; and that he accepted his mistake of indulging in smuggling of gold in a concealed manner without declaring the same, as he intended to avoid payment of applicable Customs duty.

3. The instant revision application has been filed, mainly, on the grounds that there was non-compliance of statutory provision under Section 102 of the Customs Act, 1962 as the Applicant was not given the option to be searched in the presence of Gazetted Officer or Magistrate; that though the Applicant had intention to smuggle the gold, he did not make any attempt to smuggle the gold; that valuation of the gold was improperly made; that imposition of penalty u/s 112 of the Customs Act, 1962 is invalid; and that penalty u/s 114AA of the Customs Act, 1962 is not sustainable.

4. Personal hearing was fixed on 31.10.2022, 18.11.2022 and 09.12.2022. However, no one appeared for the Applicant. The request for adjournment of the hearing scheduled on 09.12.2022 was rejected as this was the last and final opportunity. Sh. Neeraj Kumar Verma, Superintendent supported the orders of lower authorities.

5. The Government has carefully examined the matter. As per sub-section (3) of Section 129DD *ibid*, a revision application shall be accompanied by a fee of Rs.1000/- when the amount of duty and interest demanded, fine or penalty levied by an officer of customs in the case to which the application relates is more than one lakh rupees. The use of word 'shall' in sub-section (3) makes it apparent that the requirement of fee is mandatory. It is also observed that the Applicant failed to pay the requisite fee despite being repeatedly advised, *vide* letters dated 02.02.2018, 19.10.2022, 31.10.2022 and 17.11.2022. Moreover, court fee stamps have also not been affixed on the application. Therefore, Government holds that the instant revision application is not maintainable as it is not accompanied by the fee provided under Section 129DD (3).

6. Further, as per sub-section (2) of Section 129DD ibid, a revision application shall be made within 03 months from the date of communication to the Applicant of the order against which the application is being made. In this case, the date of communication of the Order-in-Appeal is stated to be 26.09.2017, as per Form No. CA-8, whereas the revision application has been filed on 04.01.2018 i.e. with a delay of 09 days. No application for condonation of delay has been filed. Hence, the revision application is also liable to be rejected as time barred.

7. The revision application is rejected for the reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India

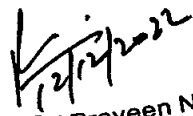
Sh. Mahesh Vishandas Balwani  
S/o Sh. Vishandas Gopaldas Balwani  
KishinLeela, Flat No. 16, 4<sup>th</sup> Floor  
Opposite HDFC Bank, Kopri Colony  
Thane, Maharashtra

Order No. 376 /22-Cus dated 09-12-2022

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. The Pr. Commissioner of Customs, Airport and Air Cargo Complex, Kempegowda International Airport, Bengaluru-560300.
3. Sh. D.S Chadha, Prabjyoti K. Chadha (Advocates), G-16, IInd Floor, Lajpat Nagar-I, New Delhi-110024.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED

  
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