

SPEED POST



F. No. 375/12/B/2020-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... 10/2/22

Order No. 44/22-Cus dated 9-12-2022 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 129DD of the Customs Act 1962 against the Order-in-Appeal No. CCA(A)Cus/D-I/Air/418/2019-20 dated 31.10.2019 passed by the Commissioner of Customs (Appeals), NCH, New Delhi

Applicant : Sh. Gurcharan Singh, New Delhi.

Respondent : Commissioner of Customs, IGI Airport, New Delhi.

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**ORDER**

A Revision Application No. 375/12/B/2020-RA dated 29.01.2020 has been filed by Sh. Gurcharan Singh, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CCA(A)Cus/D-I/Air/418/2019-20 dated 31.10.2019 passed by the Commissioner of Customs (Appeals), NCH, New Delhi. The Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, IGI Airport, New Delhi, bearing No. 737/2018-19 dated 23.02.2019, wherein one (01) gold chain and one (01) gold kada, collectively weighing 260.18 grams, totally valued at Rs. 7,80,373/-, recovered from the Applicant, were confiscated and thereafter allowed to be redeemed, on payment of a fine of Rs. 1.20 Lakh, duty @ 38.5% amounting to Rs. 3,00,443/- & interest. Besides, a penalty of Rs. 1.20 Lakh was also imposed on the Applicant by the original authority, under Section 112 of the Customs Act, 1962, which has been maintained in appeal.

2. The brief facts of the case are that the Applicant arrived, on 23.01.2019, at IGI Airport, New Delhi by Flight No. MH0190, from Malaysia and was intercepted near the exit gate after he had crossed the Customs Green Channel. Detailed examination of his baggage and personal search, resulted in the recovery of one (01) gold chain and one (01) gold kada, collectively weighing 260.18 grams, totally valued at Rs. 7,80,373/-. The Applicant, in his statement dated 23.01.2019, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of said one (01) gold chain and one (01) gold kada, which were worn by him. He stated that the recovered gold items belonged to him and he carried the same from Malaysia to India; that he walked through the Green Channel undetected and admitted acts of omission and commission on his part; and that he was ready to pay the Customs duty along with fine and penalty, as applicable.

3. The revision application is filed, mainly, on the grounds that the gold ornaments were worn by the applicant on his person and were his personal and used gold ornaments which he had been wearing for long time and as such these cannot be termed as baggage and, thus, no declaration under Section 77 of Customs Act,

1962 is required; that the Appellate Authority has not discussed the judgment/orders relied upon and the evidences, submitted by the Applicant; that the detained goods be allowed for re-export; that penalty has been imposed under Section 112 without specifying the violation on the part of the Applicant; that amount deposited as pre-deposit has not been adjusted; and that the Applicant is a non-resident Indian and residing in Malaysia for the last 13 years.

4. Personal hearing, in virtual mode, was held on 04.02.2022. Sh. Rohit Kapoor, Advocate appeared on behalf of the Applicant and reiterated the contents of the RA. He highlighted that there are several discrepancies in the impugned OIA, as brought out in the RA, and, therefore, the matter may be remanded for de-novo examination to Commissioner (Appeal). No one appeared for the Respondent department nor any request for adjournment has been received.

5.1 The Government has carefully examined the matter. Considering the facts of the case and the submissions made in the RA, it would be appropriate to decide the case on merits.

5.2.1 It is observed that the Applicant did not declare the gold ornaments brought by him as stipulated under Section 77 of Customs Act, 1962, to the Customs authorities at the airport and the Applicant opted to walk through the Green Channel. Though, the Applicant claimed that he was the owner of the offending goods but he failed to produce any document, evidence etc. in support of his claim. Even at this stage, no evidence has been produced that the Applicant was the legitimate owner of the goods. No declaration was also made in the Customs Declaration Form.

5.2.2 It is the contention of the Applicant that no declaration was required to be made under Section 77 of the Act *ibid*, since gold ornaments worn on person cannot be termed as 'baggage'. The judgment of Hon'ble Kerala High Court in the case of *Vigneswaran Sethuraman vs. UOI* {2014 (308) ELT 394 (Ker.)} has been relied upon.

5.2.3 At the outset, it is to be observed that a revision is maintainable before the Government, under Section 129DD of the Act, only if the case relates to any of the matters listed in first proviso to Section 129A. These matters are – (a) baggage, (b) short landing, and (c) drawback. Since the present case neither relates to 'short landing' nor to 'drawback', the present revision application is evidently filed since the matter relates to 'baggage'. Therefore, by filing the present RA as the matter relates to 'baggage', while simultaneously contending that the goods are not 'baggage', the Applicant has taken self contradictory stands.

5.2.4 On merits, the Government is not persuaded by this contention of the Applicant, as evident from the Baggage Rules, 2016 themselves. Rule 3 & Rule 4 of the Rules *ibid* specify the entitlement for duty free clearance in bonafide baggage, in respect of passengers arriving from countries other than Nepal, Bhutan or Myanmar and those arriving from Nepal, Bhutan or Myanmar, respectively. These rules read as under:

***"Rule 3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar.-An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -***

*(a) used personal effects and travel souvenirs; and*

*(b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*

*Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,*

*(a) used personal effects and travel souvenirs; and*

*(b) articles other than those mentioned in Annexure- I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*

*Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.*

*Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.*

**Rule 4. Passenger arriving from Nepal, Bhutan or Myanmar.-** *An Indian resident or a foreigner residing in India or a tourist, not being an infant arriving from Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,*

*(a) used personal effects and travel souvenirs; and*

*(b) articles other than those mentioned in Annexure -I up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*

*Provided that where the passenger is an infant, only used personal effects shall be allowed duty free: Provided further that where the passenger is arriving by land, only used personal effects shall be allowed duty free.*

*Explanation.- The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger."*

Thus, it is clear that, as per Baggage Rules, 2016, articles "carried on the person or in the accompanied baggage of the passenger" both are part of 'baggage'. It is to be noted that the judgement in the case of Vigneswaran Sethuraman (supra) is with reference to the Baggage Rules, 1998 and not the Baggage Rules, 2016, which are applicable in the present case.

5.2.5 Further, the Government has, in its Order No. 67/2018-Cus., dated 27.04.2018 [2018 (363) E.L.T. 802 (GOI)], held as under:

*" Para 5. ....The respondent has misconstrued the scope of "baggage" as suitcase, bags or containers only in a narrow sense. Whereas the scope of baggage in the context of Chapter XI of the Customs Act, 1962, is much wider so as to cover all the goods carried by a person as a passenger irrespective of whether the goods are stuffed in a bag or in a body or worn on the body. If the goods worn on the body are kept outside the ambit of the term "baggage" as envisaged in Sections 77, 78, and 79 of the Customs Act, etc. as claimed by the respondent such goods will be regarded as cargo and all the provisions contained in the above-mentioned Sections will become superfluous. Since, the goods worn on a person's body cannot be considered as a cargo also, the*

*term "baggage" more appropriately covers such goods. Therefore, Government does not have any doubt that the present revision application involves a dispute regarding baggage only and accordingly the revision application has been correctly filed before the Government."*

5.2.6 It is also to be observed that several Hon'ble High Courts have upheld allegations of contravention of Section 77 when the person concerned failed to declare the gold kept by him on his body or in the clothes worn by him. In the case of *Commissioner of Customs (Preventive), Lucknow vs. Deepak Bajaj {2019 (365) ELT 695 (All.)}*, the Hon'ble Allahabad High Court has held that the person concerned was required to make a declaration under Section 77 *ibid* in respect of gold recovered from his jean, vest, coat and shoes. Similarly, the Hon'ble Delhi High Court (i.e. the jurisdictional High Court) has, in the case of *Air Customs vs. Begaim Akynova {WP (Cri.) 1974/2021}*, *vide* judgment dated 03.01.2022, upheld the punishment imposed in a case where the passenger was found carrying gold concealed inside the body around the waist and thigh wherein the department had, *inter-alia*, alleged contravention of Sections 77 & 79 of the Customs Act, 1962.

5.2.7 In view of the above, the contention of the Applicant that the offending goods worn by him are not covered as "baggage" cannot be accepted. As such, it is held that the Applicant was required to make a declaration, under Section 77, in respect of the jewellery worn by him.

5.3 The Applicant has contended that he should have been allowed to re-export the goods. However, on perusal of the Order of the original authority dated 23.02.2019, it is observed that the Applicant himself requested for release of the offending goods on payment of duty, fine and penalty. He never requested for the re-export of the detained goods at the original stage. In any case, as per Section 80 of the Customs Act, 1962,

**"SECTION 80. 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."*

Thus, making of true declaration under Section 77 is a condition precedent to the re-export being allowed. In this case, such a declaration has admittedly not been made. Therefore, the re-export, even if asked for, could not have been allowed by the original authority. This position is supported by the judgment of Hon'ble Allahabad High Court in Deepak Bajaj (supra) wherein it is held that a declaration under Section 77 "is a sine qua non for extending the benefit of Section 80 of the Act."


5.4 Further, regarding confirmation of the demand of duty by the original authority, it is observed that the Applicant visited the Customs office on 30.01.2019 and submitted a letter dated 30.01.2019 wherein he opted to pay the duty, fine and penalty for the release of the detained goods and submitted that he did not want any show cause notice and personal hearing in the matter. As per provisions of Section 124, clause (c), the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral. Thus, there is no infirmity in the Order dated 23.02.2019 passed by the original authority, on this count. Since the Commissioner (Appeals) has rejected the appeal, the order of original authority demanding duty at baggage rate also stands confirmed.

5.5 From the documents available on record, it is observed that till the adjudication of the case by the original authority, the address of the Applicant was shown at Tilak Nagar, New Delhi. The Applicant has, however, contented that he is a non-resident Indian and residing in Malaysia for the last 13 years. From the travel details, it is observed that he departed from India on 13.01.2019 and arrived in India on 23.01.2019 with the offending goods. The Applicant is a holder of Indian passport

and as defined under Baggage Rules, "resident" means a person holding a valid passport issued under the Passports Act, 1967 (15 of 1967) and normally residing in India. Hence, the contention of the Applicant that he is non-resident Indian does not appear to be borne out of records.

6. In the facts and circumstances of the case, the penalty imposed by the original authority and upheld by the Commissioner (Appeals) is just and fair.

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

  
(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Gurcharan Singh,  
C/o Sh. Mubashshir Shah Khan,  
H.No. 1632, First Floor, Dakhni Rai Street,  
Daryaganj, Delhi – 110002.

Order No. 44 /22-Cus dated 09-02-2022

Copy to:

1. The Commissioner of Customs (Appeals), New Customs House, New Delhi-110037;
2. The Commissioner of Customs, IGI Airport, New Delhi;
3. Sh. Rohit Kapoor, Advocate, 188, Sector-46, Faridabad-121010, Haryana,
4. PA to AS(RA).
5.  Guard file.
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अध्याय अधिकारी / Section Officer  
वित्त विभाग (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
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