

**SPEED POST**



**F. No. 373/354/B/2019-R.A.  
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: 10/2/23.

Order No. 45 / 23-Cus dated 10.2.2023 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 129DD of the Customs Act, 1962 against the Order-in-Appeal AIRPORT. C.Cus.I. NO. 138/2019 dated 21.08.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

**APPLICANT** : Sh. Mohamed Amanullah Waheed, Chennai

**RESPONDENT** : Pr. Commissioner of Customs, Chennai-I

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**ORDER**

A Revision Application No. 373/354/B/2019-R.A. dated 09.09.2019 has been filed by Sh. Mohamed Amanullah Waheed, Chennai (hereinafter referred to as the Applicant) against Order-in-Appeal AIRPORT. C.Cus.I. NO. 138/2019 dated 21.08.2019, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicant herein against the Order-in-Original No. 158/2018-19-Commissionerate-I dated 22.11.2018, passed by the Joint Commissioner of Customs, Chennai, on the grounds of limitation.

2. Briefly stated, the Applicant herein arrived at Chennai Airport, from Kuala Lumpur, on 05.09.2018, and was intercepted by Customs officers when he was about to exit the arrival hall after passing through the Green Channel. Upon being questioned whether he was in possession of dutiable goods/gold/gold jewellery either in his baggage or on his person, he replied in negative. Upon examination of his one hand baggage, 02 nos. of yellow colour metal cut bits concealed by attaching to the laptop adaptor using black adhesive tape kept along with food items and personal effects were recovered. The Government approved gold appraiser examined the said 02 nos. of yellow coloured metal cut bits and certified them to be of gold of 24 carat purity, totally weighing 459 grams and collectively valued at Rs. 14,40,801/-. The Applicant in his statement, recorded immediately after seizure, tendered under Section 108 of the Customs Act, 1962, inter-alia, stated that he was doing import/export business and earn Rs. 25,000/- per month; that the two gold cut bits belong to him; that he replied in negative when questioned on possession of foreign currency for payment of duty; that he was not in possession of any valid permit/licence/document issued by the Competent Authority for legal import of the gold; and that he had attempted to smuggle the gold by concealing and not declaring to Customs. The original authority, vide the aforesaid Order-in-Original dated 22.11.2018, ordered for absolute confiscation of the subject 02 nos. of gold cut bits, under Section 111(d) & 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 1,00,000/- was also imposed on the Applicant, under Section 112(a) of the Act, *ibid*. The appeal filed by the Applicant has been rejected by the Commissioner (Appeals), on the grounds of limitation.

3. The Revision Application has been filed, mainly, on the grounds that the appellate authority simply glossed over all the judgments and points raised in the appeal grounds and no reason was given to reject the appeal; that the seized gold belonged to Applicant; that ownership of gold is not disputed and there is no ingenious concealment; and that gold is not prohibited item.

4. Personal hearing in the matter was fixed on 20.01.2023, 02.02.2023 and 09.02.2023. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal based on records.

5. The Government has examined the matter carefully. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), on the grounds of limitation, without considering the merits of the case. The Commissioner (Appeals) has recorded that the Order-in-Original dated 22.11.2018 was received by the Applicant on 26.11.2018 and appeal has been filed on 07.02.2019, i.e., 73 days after the date of receipt of the Order-in-Original. It is observed that, in terms of Section 128 of the Customs Act, 1962, the appeal before the Commissioner (Appeals) can be filed within a period of sixty days. However, the Commissioner (Appeals) can condone a delay up to thirty days, on sufficient cause being shown. In the present case, based on the condonation of delay application filed along with the appeal memorandum, the Commissioner (Appeals) has held that it was not a fit case for condoning the delay. However, the Government's attention is drawn to a letter dated 19.08.2019, of the Ld. Counsel of the Applicant herein, addressed to the Commissioner (Appeals) wherein it is stated that "At the time of personal hearing, Counsel undertake to file better affidavit and petition to condone the delay of 11 days." A detailed affidavit alongwith medical papers is said to have been submitted alongwith this letter dated 19.08.2019. It is observed that the Commissioner (Appeals) has not taken this letter, affidavit and other papers before deciding the matter. Therefore, it will be in the interest of justice that the matter is remanded to the Commissioner (Appeals) for consideration afresh. All issues, including that of condonation of delay, are kept open for decision.

into  
consideration  
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6. The revision application is allowed by way of remand to Commissioner (Appeals), with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

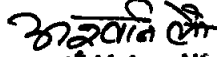
Shri. Mohamed Amanullah Waheed  
C/o. S. Palanikumar, Advocate, No. 10  
Sunkurama Street, Second Floor  
Chennai-600001.

Order No. 45 /23-Cus dated 10.2.2023

Copy to:-

1. The Pr. Commissioner of Customs, Chennai-I, Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai-600027.
2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. Ms. P. Kamalamalar, Advocate, No. 10, Sunk ram Street, Second Floor, Chennai-600001.
4. PPS to AS(RA).
5. Guard-File.
6. Spare Copy.
7. Notice Board.

ATTESTED



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