

SPEED POST



F. No. 373/95/B/2018-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..17/02/23

Order No. 68/23-Cus dated 17-02-2023 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 129 DD of the Customs Act 1962 against the Order-in-Appeal AIRPORT. C.Cus.I No. 211/2017 dated 28.12.2017, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Jamal Sheigod Maraikayar, Chennai

Respondent : Pr. Commissioner of Customs, Chennai-I

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ORDER

A Revision Application, bearing No. 373/95/B/2018-RA dated 19.03.2018, has been filed by Sh. Jamal Sheigod Maraikayar, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal AIRPORT. C.Cus.I No. 211/2017 dated 28.12.2017, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has modified the Order-in-Original passed by the Assistant Commissioner of Customs, Anna International Airport, Chennai, bearing OS No. 509/2017-Batch A dated 30.09.2017. Vide the aforementioned Order-in-Original, 300 nos of Axe Oil, 24 nos of Jasmine Perfume Oil & 4 nos of Dell Laptop used, totally valued at Rs. 46,720/-, were confiscated under Sections 111(d), (l), (m) & (o) of the Customs Act, 1962, with an option to redeem the same on payment of fine of Rs. 23,660/-. Further 8 Bottles of Gold Standard Protein Powder, 4800 nos of Gudang Garam Cigarettes and a gold chain weighing 79 grams, collectively valued at Rs. 2,80,581/- were absolutely confiscated under Sections 111(d), (l), (m) & (o) of the Act, ibid. Penalty of Rs. 5,000/- has also been imposed on the Applicant herein, under Section 112(a) of the Act, ibid. In appeal, the Commissioner (Appeals) has reduced the redemption fine imposed to Rs. 12,000/- and upheld the rest of the order passed by the original authority.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived at Anna International Terminal of Chennai Airport, from Dubai, on 01.10.2017. He had declared carrying dutiable goods valued at Rs. 35,000/- in his Customs Declaration, under Section 77 of the Customs Act, 1962. Upon search of his person/baggage, goods mentioned above were recovered. During the personal hearing, he stated that the goods brought by him were to sell in the domestic market for profit.

3. The revision application has been filed, mainly, on the grounds that statement during personal hearing is false as he never stated that he brought the goods to sell in the domestic market for profit; that the gold chain is of Indian origin; that protein powder is not a prohibited item; that bottles of Jasmine Perfume Oil, Axe Oil, used laptops cannot be termed as in commercial quantity and non-bonafide baggage; that there is no misdeclaration of value and of quantity; and that after allowing 01 carton of cigarettes, the rest may be allowed for re-export.

4. Personal hearing was fixed on 13.01.2023, 01.02.2023 & 17.02.2023. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is being decided based on available records.

5. The Government has carefully examined the matter. It is observed that the Applicant was intercepted and offending goods were recovered from him. He had declared carrying goods valued at only Rs. 35,000/- in his Customs Declaration, filed under Section 77 of the

Customs Act, 1962. The Applicant admitted the recovery of offending goods from him and that the goods brought by him were to sell in the domestic market for profit. Therefore, it is incorrect of the Applicant to contend that there is no misdeclaration of value. Further, no material has been placed on record to support the allegation that his statement was false and forcefully obtained. As such, the claim to this effect is not tenable.

6. 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 chain as stipulated under Section 77 of the Act, *ibid*. No document evidencing ownership and licit purchase have also 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 gold chain to be liable to confiscation under Section 111 of the Act, *ibid*. In respect of all other items also, the Commissioner (Appeals) has for valid reasons upheld the confiscation. The quantities imported are, undoubtedly of commercial nature and, therefore, it is incorrect of the Applicant to claim relief from confiscation on the grounds that the goods were bonafide baggage.

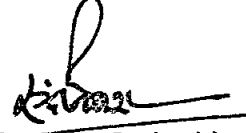
7.1 Other contention of the Applicant is that re-export of cigarettes may be allowed.

7.2 The Government observes that a specific provision regarding re-export of baggage articles is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. The said Section 80 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”

7.3 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 vs Commissioner of Customs (P), Lucknow {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 not made a true declaration under Section 77. Hence, the question of allowing re-export does not arise.

8. In the facts and circumstances of the case, the quantum of penalty imposed is just and fair.
9. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

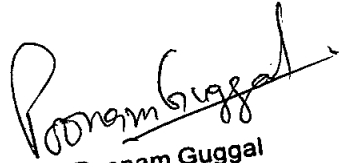
Sh. Jamal Sheigod Maraikayar
C/o P. Kamalamalar Advocate,
No. 21, Kubera Building, Sunkurama Street,
Second Floor, Chennai-600001.

Order No. 68/22-Cus dated 17-02-2022

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
2. The Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai-600027.
3. Sh. P. Kamalamalar, Advocate, No. 21, Kubera Building, Sunkurama Street, Second Floor, Chennai-600001.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



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