

SPEED POST



F. No. 373/422/B/SZ/2022-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. 18/09/24..

Order No. 194 /24-Cus dated 18-09-2024 of the Government of India passed by Smt. Shubhagata Kumar, 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 1595/2022 dated 04.07.2022 passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Smt. Reena Anthony Swamy, Nilgiris, Tamilnadu

Respondent : Pr. Commissioner of Customs, Airport & Air Cargo Complex, Bengaluru.

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ORDER

A Revision Application, bearing No. 373/422/B/SZ/2022-RA dated 05.12.2022, has been filed by Smt. Reena Anthony Swamy, Tamilnadu (hereinafter referred to as the Applicant), against the Order-in-Appeal 1595/2022 dated 04.07.2022 passed by the Commissioner of Customs (Appeals), Bengaluru.

2. Brief facts of the case are that the Applicant, an Indian Passport holder, had attempted to smuggle 4 nos. Crude Gold Chains & 4 nos. of Crude Gold Bangles weighing 330.45 grams, 110 outers of Esse Gold & Mond Super Slim Cigarettes and 7 nos. of Apple iPhone 12 Pro Max (256GB) totally valued at Rs. 28,99,044/-, into India and had travelled from Dubai to Bengaluru on 11.07.2021. The facts of the case have been discussed in detail in the O-I-O No. 1287/2021(AP-ADM) dated 14.12.2021 issued by the Additional Commissioner of Customs, Kempegowda International Airport, Bengaluru and need no reiteration here.

3. The total value of the gold weighing 330.450 grams has been valued at Rs. 16,33,744/-, 110 outers of Esse Gold and Mond Super Slim Cigarettes (all the cigarette packages do not have the statutory packaging as per COTPA, 2003) has been valued at Rs. 2,86,000/- and 7 nos. of Apple iPhone 12 Pro Max (256GB) has been valued at Rs. 9,79,300/-, which have been confiscated under a Mahazar dated 11.07.2021 under Section 111(d), 111(e), 111(i), 111(l) and 111(m) of the Customs Act, 1962 by the adjudicating authority i.e. by the Additional Commissioner of Customs, Kempegowda International Airport, Bengaluru vide O-I-O No. 1287/2021(AP-ADM) dated 14.12.2021. Penalty of Rs. 7,25,000/- has also been imposed on the Applicant under Section 112(a) of the Customs Act, 1962.

4. Aggrieved, the Applicant filed appeal before the Commissioner of Customs (Appeals), Bengaluru who has upheld the order of confiscation of the above said impugned goods and penalty imposed on the Applicant. Aggrieved by the O-I-A, the Applicant filed this appeal.

5. The instant revision application has been filed, mainly, on the grounds that the order of the lower adjudicating authority is against law, weight of evidence, circumstances and probabilities of the case; that she brought the gold for her own use; that she purchased the gold at Dubai by borrow money from his friends at Dubai; that she never concealed the impugned gold bangles & chains and wore the same at the time of interception; that she brought 7 nos. of iPhone for family members; that she abandoned the cigarettes; that she never crossed the red channel and she was all along the red channel and orally declared the impugned seized goods; that the seized goods are not prohibited; option ought to have been given for the release of impugned goods under Section 125 of the Customs Act, 1962 on payment of redemption fine. The prayer is for the impugned gold items be permitted for re-export/released and also reduce the personal penalty sum of Rs. 7,25,000/-.

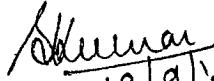
6. Personal hearing in the matter was fixed on 13.09.2024. Smt. P. Kamalamalar, Advocate on behalf of the Applicant appeared and submitted that the Applicant worked in Malaysia for three years before she returned to India at the time of the COVID pandemic and that there is no previous COVID pandemic and that there is no previous offence against her. She submitted that the Applicant wore the 4 gold chains and bangles on her person and that they were not in her bag as recorded by Customs, more so because if they were concealed in the bag, then the bag ought to have been seized as well, which is not the case. She admitted to the cigarettes and iPhones not being bonafide baggage. When pointed out there is an unexplained delay of around 63 days, she prayed for condonation of reduction in penalty.

7. On examination of the relevant case records, it is observed that the impugned Order-in-Appeal dated 04.07.2022 was received by the Applicant on 06.07.2022 as admitted by him. The revision application has been filed on 05.12.2022. Thus, there is an inordinate delay of around 63 days in filing revision application beyond the normal period of limitation. As per request application for condonation of delay by the Applicant, the reason cited for the delay has been attributed to her health issue and financial problem which has

not been substantiated with any document or evidence and is therefore not acceptable as sufficient cause of the delay.

8. As per sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., a revision application can be made within 3 months from the date of communication of the order against which the application is being made. However, in terms of the proviso to sub-section (2) the Government may allow an application to be presented within a further period of 3 months if the Government is satisfied that the Applicant was prevented by 'sufficient cause' from presenting the application within the normal period of 3 months. In view of the facts and circumstances of the case, the Government is constrained to hold that the Applicant has been unable to show sufficient cause as required under Section 129DD of the Customs Act, 1962. The revision application is thus rejected on grounds of limitation without traversing the merits of the case.

9. The revision application is rejected as barred by limitation.


18/9/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

Smt. Reena Anthony Swamy,
D/o Shri Anthony Swamy,
D.No. 11/96, Nandhatti (PO),
Gudalur, Nilgiris,
Tamil Nadu – 643 212

Order No. 194 /24-Cus dated 18-09-2024

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 & Air Cargo Complex, Air India SATS, Air Freight Terminal, Kempegowda, Bengaluru-560300.
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600001.
4. PA to AS(RA)

5. Guard File
- ✓ 6. Spare Copy
7. Notice Board.

Shailendra
18/9/24
ATTESTED (शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi