

SPEED POST



F. No. 373/216/B/2016-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...16/01/24

Order No. /6/24-Cus dated /6-01-2024 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 No. 53/2016 dated 15.02.2016, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Sh. Sharwan Singh Rathore, Jodhpur

Respondent : Pr. Commissioner of Customs, Bengaluru

ORDER

A Revision Application, bearing No. 373/216/B/2016-RA dated 25.05.2016, has been filed by Sh. Sharwan Singh Rathore, Jodhpur (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 53/2016 dated 15.02.2016, passed by the Commissioner of Customs (Appeals), Bengaluru, whereby the Commissioner (Appeals) has upheld the Order-in-Original No. 164/2014 dated 01.10.2014, passed by the Additional Commissioner of Customs (Airport), Bengaluru. Vide the aforementioned Order-in-Original, one gold chain and one gold bangle, totally weighing 465.70 grams and valued at Rs. 12,55,992/-, recovered from the Applicant, had been absolutely confiscated, under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalty of Rs. 1,50,000/- & Rs. 75,000/- were also imposed on the Applicant under Section 112(b) & 114AA, respectively of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived at Kempegowda International Airport, from Goa, on 28.09.2014 while he was passing through the metal detector. While he was passing through the metal detector a beep sound came from the metal detector and accordingly, he was asked whether he had to declare anything to Customs to which he did not give any reply. Thereafter upon his physical search, a gold chain worn by him around his neck and one gold bangle worn by him in one of his wrists were recovered. Upon being asked to produce purchase documents of the gold items, he replied that he did not have any documents. The Applicant had filed a declaration while boarding the flight at Goa that he had one gold bangle, however, he did not mention the gold chain in it. On being asked for a clarification on that declaration, he informed that the said declaration was false, as at the time of boarding the flight he did not have any gold bangle with him; that he had received the gold bangle and the gold chain from a passenger coming from Dubai, while deboarding the flight in Bangalore; that he had made said declaration in Goa, in anticipation of receipt of gold in form of gold bangle in Bangalore, which he intended to clear based on said declaration. The said gold items were tested and certified by the Authorized Gold Valuer as of 23.5 carat purity of foreign origin, totally weighing 465.70 grams and totally valued at Rs. 12,55,992/-.

The Applicant, in his statement dated 30.09.2014, recorded under Section 108 of the Customs Act, 1962, stated inter-alia that in April 2014 he met one Bunty who dealt in various types of imported goods and supplied them to various customers at cheaper rates; that Bunty informed him that he could provide him gold at rates cheaper than the rates prevailing in Jodhpur; that as he was in need of gold for his sister's marriage, he approached him to supply 450 grams of gold for which Bunty asked him to pay Rs. 11,50,000/-; that he arranged that money from his father, from a loan and from one Gajendra etc.; that Bunty had informed him that the gold would be delivered to him in Bangalore, for which he would have to travel vide Air India flight AI-994 which comes from Dubai and goes to Bangalore via Goa; that his tickets for the said flight on the particular date would be booked by one Balveer Singh Bhati, who would also be travelling with him; that during the said journey, he would have to wear particular type of shoes and a watch, based on which he would be identified by the passenger coming from Dubai and carrying the gold to be delivered to him; that while in the flight he was identified by the person carrying the gold, identified based on his shoes and watch, the gold was delivered to him at the time of dis-embarking from the flight; that as soon as he received the gold items, he put them on his body and covered them under his shirt and in the meanwhile the person from he had received the gold items vanished from his sight. The matter was adjudicated vide the aforementioned Order-in-Original dated 01.10.2014, the gold chain and bangle was absolutely confiscated and penalty imposed. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed mainly on the grounds that no panchanama was drawn and the entire case was fabricated; that Applicant was made to sign several documents without telling him about the contents; that he was a domestic passenger who was wearing a normal Kada and the Chain and those were not concealed. It is prayed to release the gold items and impose minimum amount or redemption fine and penalty.

4. Personal hearing in the matter was held on 04.10.2023. Sh. D.S Chadha, Advocate for the Applicant appeared and reiterated his submissions contained in the RA. He stated that the Applicant was detained in an unauthorized manner; that the impugned gold was not ingeniously concealed; that they had produced purchase proofs before Commissioner

(Appeals) at the time of hearing but that did not find a mention in the OIA. He further stated that the applicant did not give any request for waiver of Show Cause Notice, yet no SCN was given to them. He pointed to several procedural lapses at the time of Mahazar proceedings and sought that the matter be remanded back to the adjudicating authorities in the interest of justice and fair play. He further sought to submit additional citations/case laws in support of his case on that day by email.

5. The Government has carefully examined the matter. It is observed that the Applicant has contended that no panchanama was drawn in the case. However on perusal of the records of the case, it is seen that panchanama/mahazar dated 30.09.2014 forms part of the documents placed on record. Further, the applicant has stated that he has submitted invoices for the purchase of the gold items, however no mention of these invoices figures in the OIA. Moreover, it is stated that the gold chain was worn on his person and there was no concealment or misdeclaration. It is also contended by him that he did not give any request for waiver of Show Cause Notice and yet he was not served with the Show Cause Notice and that several procedural lapses took place at the time of Mahazar proceedings.

6. In view of the aforesaid facts and circumstances of the case, it would be in the interest of justice that the matter is remanded to the original adjudicating authority for deciding the matter afresh after considering all the aspects of the case as above and after following the principles of natural justice.

7. The revision application is, accordingly, allowed by way of remand to the original adjudicating authority, with directions to consider the case afresh and after giving the applicants an opportunity to be heard, to pass a comprehensive, reasoned and speaking order within three months from the date of receipt of this order. So ordered.



(Shubhagata Kumar)

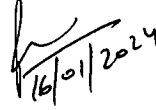
Additional Secretary to the Government of India

Sh. Sharwan Singh Rathore
S/o Sh. Dheer Singh
Moderna Colony, Jodhpur
Rajasthan-342001.

Order No. 16/24-Cus dated 16-01-2024

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. Pr. Commissioner of Customs, 3rd Floor, AI SATS Cargo Terminal, Air Cargo Complex, Devanahalli, Bengaluru-560300.
3. Sh. D. S Chadha, 92 GF, Block V, Eros Garden, Faridabad-121009.
4. PPS to AS(RA).
5. Guard file.
- ✓ 6. Spare Copy.
7. Notice Board.



ATTESTED

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