

SPEED POST



F. No. 375/26/B/2023-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. 25/09/24.

Order No. 203/24-Cus dated 25-09-2024 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 No. 23(SM)CUS/JPR/2020 dated 13.03.2020, passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur.

Applicants : Sh. Choosith Sudha, Bangkok

Respondent : The Commissioner of Customs (P), Jodhpur

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ORDER

A Revision Application No. 375/26/B/2023-RA dated 13.03.2023 has been filed by Sh. Choosith Sudha, Bangkok (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 23(SM)CUS/JPR/2020 dated 13.03.2020, passed by the Commissioner of Central Excise & CGST (Appeals), Jaipur. The Commissioner (Appeals) has upheld the Order-in-Original No. 42/2018 dated 25.10.2018 passed by the Joint Commissioner of Customs (airport), Jaipur. Vide the aforementioned Order-in-Original one rhodium-plated gold kadaa, one rhodium-plated gold chain and one black/brown coloured gold chain all of 99.90% purity, totally weighing 2000 grams and collectively valued at Rs. 64,13,580/-, recovered from the Applicant had been absolutely confiscated under Section 111(d), (i), (j), (l) & (m) of the Customs Act, 1962. Besides, penalties of Rs. 1,00,000/- & Rs. 20,000/- were also imposed upon the Applicant under Section 112(a)&(b) and 114AA of the Act, *ibid*.

2. Brief facts of the case are that the Applicant was intercepted by Customs officers while passing through the Green Channel of International Airport, Jaipur upon his arrival from Bangkok on 15.10.2018. The officers enquired from him whether he was carrying any contraband goods/gold, which he denied. Thereafter he was searched, but nothing incriminating was found. When the officers scanned his hand baggage on the X-Ray Machine, they found some gold-like material in the hand bag. The officers again asked him whether he had any dutiable item/gold which were to be declared for customs duty which he again denied. Thereafter, upon examination of his hand baggage, one rhodium plated kadaa, one rhodium plated chain and one black/brown coloured chain, wrapped in a cloth, were found. The Government approved Valuer after a thorough examination of the recovered items, confirmed them to be of gold as mentioned above. In his statement dated 15.10.2018, recorded under Section 108 of the Customs Act, 1962, the applicant stated inter-alia that he is a resident of Thailand and admitted that he had smuggled these gold items from Thailand to Jaipur; that these gold items belong to him and that he had purchased the same from Thailand; that he knows that there is lucrative margin in the Indian market

when gold is smuggled into India without payment of duties and taxes; and that he intended to sell these items to a jeweller in the local market and earn good profit. The matter was adjudicated vide the aforesaid order dated 25.10.2018. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed mainly on the grounds that due to language barrier, declaration could not have been made as per the provisions of law; that since the applicant has deposited the penalty, therefore his application restricts the challenge to the impugned OIA only to the extent of absolute confiscation; that import of gold is not prohibited; and that his statement was not voluntary.

4. Personal hearing in the matter was held on 18.09.2024. Sh. Daksh Pareek, Advocate appeared for the applicant and submitted that since the value of the impugned goods was greater than Rs. 50,00,000/-, the department launched a case of prosecution against the applicant and the applicant opted for compounding of offences application in which an order was passed by CC Customs granting immunity from prosecution. When pointed out that the RA has been filed with a delay of more than a 1000 days which cannot be condoned under Section 129DD(2), he accepted the delay which he said was a result of delayed receipt of the OIA & also acknowledged that a delay of more than three months cannot be condoned by the Revisionary Authority as per law.

5. The Government has examined the matter. The revision application has been filed on 13.03.2023 while the OIA has been passed on 13.03.2020. Thus there is an inordinate delay of around 2 years and 9 months in filing the revision application. Further, keeping in view the COVID pandemic, the Hon'ble Supreme Court, vide Order dated 23.03.2020, in SMW(C) No. 3/2020, directed extension of period of limitation prescribed under general law of limitation or under any special laws w.e.f. 15.03.2020, till further orders. Further orders in the matter were made on 08.03.2021. Vide order dated 08.03.2021 the Hon'ble Apex Court further extended the period of limitation to 28.02.2022. Even if the extended period of limitation is deducted from the period

between passing of OIA and date of filing of revision application, there is still a delay of more than a year.

6. The applicant has intimated that he did not receive the copy of OIA and only after he was asked by the department about release of goods, he came to know that the order confirming absolute confiscation has been passed by the appellate authority. The applicant was accordingly informed by the department that the copies of the OIA were available on the official website of the Commissioner (Appeals) and the same could be downloaded from the website. Then the applicant downloaded and annexed the copy of the impugned OIA in the revision application.

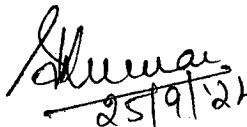
7. Further, the applicant has submitted a purported copy of a postal receipt which he claims to be provided to him by the respondent by which the impugned OIA purportedly came to be served upon him and a postal tracking report taken from the General Post Office, Jaipur which shows that the item booked is still in India and has not reached the applicant. In this connection, it is noted that no copy of letter issued by the Respondent has been submitted by him vide which the copy of said postal receipt was provided to the applicant and thus raising a doubt about its authenticity. Moreover, the date of booking as shown in the postal receipt is 21.03.2020 whereas the date of booking as shown in the postal tracking report is 13.02.2023. Thus this contention of the applicant that he did not receive the OIA and he only came to know about the passing of the same when the department enquired from him about the release of goods appears to be an afterthought.

8. The Government observes that while Section 153 of the Customs Act, 1962, at the relevant time, provided for service of notice by "registered post", in the present case the service has been made by "speed post". Thus, it can be argued that the service not having been made by "registered post", the department cannot be allowed the benefit of judgments above. However, the Government finds that the Hon'ble Orissa High Court has, in the case of Jay Balaji Jyoti Steels Ltd. Vs. CESTAT, Kolkata [2015 (37) STR 673 (Ori.)], held that both "speed post" and "registered post" satisfy

the requirement of Section 28 of the Indian Post Office Act, 1898, and, hence, "speed post" also has to be treated as "registered post". Further, in the case of Shyam Ferro Alloys Ltd. [2016 (340) ELT 488 (AP)], the Hon'ble Andhra Pradesh high Court has held that "the expression "registered post" appearing in Section 153(a) of the Customs Act, 1962, have to be construed as including within its purview, the method of registering an article, to be taken by speed post."

9. At the outset, the Government observes that the OIA impugned herein was received by the Applicant on time whereas the RA has been filed on 13.03.2023. Therefore, the RA has been filed beyond the normal period of limitation of three months, as per sub-section (2) of Section 129DD *ibid*. As per sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., 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 the instant case, the delay being more than 3 months beyond the normal period of appeal, this delay cannot be condoned. The revision application is thus rejected on grounds of limitation without traversing the merits of the case.

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


25/9/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Choosith Sudha
S/o Sh. Kraiwut Sudha
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Bangkok, Thailand

Order No. 203/24-Cus dated 25-09-2024

Copy to:

1. The Commissioner of Customs (P), Jodhpur Headquarters, New Central Revenue Building, Statue Circle 'C' Scheme, Jaipur-302005.
2. The Commissioner of Customs, Central Excise & CGST (Appeals), Jaipur, New Central Revenue Building, Statue Circle, 'C' Scheme, Jaipur-302005.
3. Sh. Daksh Pareek/Arjun Singh, Advocates, 225 Nemi Sagar Colony, Queens Road, Vaishali Nagar, Jaipur-302021.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

Shailendra
25/9/24
ATTESTED

(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
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Ministry of Finance (Deptt. of Rev.)
भारत सरकार, Government of India
जयपुर, राजस्थान, India