

SPEED POST



F. No. 373/18/B/SZ/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. 03/10/24.

Order No. 207/24-Cus dated 03-10-2024 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 Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal COC-CUSTM-000-APP-03/2022-23 dated 29.07.2022, passed by the Commissioner of Customs (Appeals), Cochin.

Applicant : Shri Sadath Poyyathra, Palakkad

Respondent : The Commissioner of Customs (Preventive), Cochin

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ORDER

A Revision Application No. 373/18/B/SZ/2023-RA dated 23.03.2023 has been filed by Shri Sadath Poyyathra, Palakkad (hereinafter referred to as the Applicant) against the Order-in-Appeal COC-CUSTOM-000-APP-03/2022-23 dated 29.07.2022, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original, bearing no. 86/2019 dated 13.09.2019, passed by the Joint Commissioner of Customs, Cochin, as time barred.

2. Brief facts of the case are that the officers of Air Intelligence Unit, Cochin International Airport, Nedumbassery, seized five crude gold chains totally weighing 751.00 grams and valued at Rs. 22,52,519 (Assessable value) from the Applicant on his arrival from Sharjah to Cochin on 04.02.2019. These five gold chains were found to be concealed in the pants worn by him and were recovered subsequent to the detailed examination of his person after intercepting him near the exit gate when he crossed the green channel without making a proper declaration. The Applicant also admitted in his statement recorded under Section 108 of the Customs Act, 1962 that these gold chains were handed over to him by a businessman at Sharjah who offered him a free ticket. Since the seized gold chains were undeclared and concealed by the Applicant, the Lower Adjudicating Authority vide the aforesaid O-I-O dated 13.09.2019, absolutely confiscated the five crude gold chains totally weighing 751.00 gms. valued at Rs.22,52,519/- under Section 111(d), (i), (j), (l) and (m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and imposed a penalty of Rs. 2,00,000/- on the Applicant under Section 112(a) and (b) of the Customs Act, 1962.

3. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals), Cochin who has dismissed the appeal as time barred as per the provisions of Section 128 of the Customs Act, 1962. Aggrieved by the O-I-A, the Applicant filed this Revision Application.

4. The instant revision application has been filed mainly on the grounds that the impugned order passed by the lower authority is unsustainable and that the Applicant was eligible to import gold ornaments for his domestic use; that the gold belonged to the Applicant; that he had kept the ornaments in the pocket of the pants worn by him and handed over the same to the Customs officers on demand and there is no concealment;

that he had no intention to clear the gold without payment of Customs duty; that he may be allowed to clear the gold ornaments on payment of appropriate duty. The prayer is to set aside the orders passed by the lower authorities and order the release of his gold ornaments on payment of appropriate Customs duty and to set aside the heavy penalty imposed.

5. Personal hearings in the matter were fixed on 20.09.2024 and 30.09.2024. Shri Thomas P.A., Chartered Accountant appeared on behalf of the Applicant and stated that the delay in filing the Application was due to the COVID period and the fact that the Applicant was undecided on the course of action to be taken. It was pointed out that this case is beyond the COVID period and that under the law, only a period of 03 months beyond the normal period can be condoned upon sufficient cause being shown. Hence, this application is hit by limitation. Sh. Roy Varghese, Deputy Commissioner of Customs appeared on behalf of the Respondent and submitted that this is a case of outright smuggling; that the Applicant brought five gold chains of 24 carat purity in his trouser pocket and neither declared it to Customs nor admitted the same when the DFMD beeped; that the gold did not belong to the Applicant and he carried it for monetary gain & a free ticket and hence the RA should be dismissed.

6. On examination of the relevant case records, it is observed that the impugned Order-in-Appeal dated 29.07.2022 was received by the Applicant on 14.08.2022 as admitted by him, which is after the extension of timelines as ordered by Hon'ble Supreme Court vide Order dated 10.01.2022 due to COVID. The O-I-A was received by the applicant well beyond the COVID period and therefore the contention that the delay was on account of COVID pandemic is untenable. The Hon'ble Supreme Court vide its order dated 10.01.2022, has excluded the period from 15.03.2020 till 28.02.2022 in computing the period of limitation during the COVID/lockdown period. The Revision Application has been filed on 23.03.2023 with a delay of around 131 days after the expiry of three months from the date of receipt of O-I-A. In terms of 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 three months if the Government is satisfied that the Applicant was prevented by sufficient cause

from presenting the application within the normal period of three months. In the present case, the revision application has been filed with a delay which is beyond the condonable period of 03 months and therefore it cannot be condoned.

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

Shubhagata Kumar
3/10/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Sadath Poyyathra,
S/o Shri Basheer Sainudheen Abdul,
Poyyathra House, Ittonam, Chathanur,
Palakkad -679 537 (Kerala).

Order No. 207/24-Cus dated 03-10-2024

Copy to:

1. The Commissioner of Central Tax, Central Excise & Customs (Appeals), Central Revenue Building, I.S. Press Road, Kochi -682018.
2. The Commissioner of Customs (Preventive), 5th Floor, Catholic Centre, Broadway, Cochin -882031.
3. Sh. Thomas P.A., Chartered Accountant, S4 Sangam Complex, St. Martin Road, Palarivattom, Kochi - 682025.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

Smalendy
3/10/24
ATTESTED (शैलेन्द्र कुमार मीना)
Shalendra 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