

SPEED POST



F. No. 373/357/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 25/8/23

Order No. 208/23-Cus dated 24-08-2023 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. TCP-CUS-000-APP-87-17 dated 14.12.2017 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli.

Applicant : Mohd. Sadiq, Ramanathapuram.

Respondent : The Commissioner of Customs (P), Tiruchirappalli.

ORDER

A Revision Application No. 373/357/B/2018-RA dated 18.06.2018 has been filed by Sh. Mohd. Sadiq, Ramanathapuram (hereinafter referred to as the Applicant) against the Order-in-Appeal No. TCP-CUS-000-APP-87-17 dated 14.12.2017, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has partly allowed the appeal filed by the Applicant to the extent of reducing the penalty amount from Rs. 3 lakhs to Rs. 1.3 lakhs. The original authority, i.e., the Joint Commissioner of Customs, Trichy vide Order-in-Original No. TCP-CUS-PRV-JTC-086-16 dated 25.10.2016 had ordered absolute confiscation of 07 nos of Gold Bangles and 05 nos of Gold Chains, seized from the Applicant herein, all of foreign origin having 24 carat purity, totally weighing 529.000 grams and collectively valued at Rs. 13,60,059/- under Sections 111(d), (i), (l) & (m) of the Customs Act, 1962. Besides, penalty of Rs. 3,00,000/- was also imposed upon the Applicant under Sections 112(a) and 112(b) of the Act, *ibid*.

2. Brief facts of the case are that the officers of Air Intelligence Unit, Trichy, intercepted the Applicant, who arrived from Kuala Lumpur, on 22.11.2015, by Flight No. AK27, while he was crossing the Green Channel. Upon checking of the Indian Customs Declaration Form submitted by the Applicant it was found that he had declared nothing against the caption "Total Value of dutiable goods being imported" (Sl. No. 9) as the same was left blank and had ticked nothing in the sub-heading under the caption "Are you bringing the following items into India including Gold Bullion" (Sl. No. 10). Upon being asked as to whether he had brought gold in any form with him either in person or in his hand baggage, he replied in the negative. Thereafter upon the search of his person, 07 nos of gold bangles were found inside his pant pocket and 05 nos of gold chains inside the ticket pocket of his pant. The Central Government Approved Appraiser appraised the aforementioned gold items to be of 24 carat purity, totally weighing 529.000 grams and collectively valued at Rs. 13,60,059/-. In his statement dated 22.11.2015, recorded under Section 108 of the Act *ibid*, the Applicant *inter-alia* stated that for the past five years he was residing at BLK 152, Yuar Ho Road 04H03-Singapore with his family; that for the past two years he was running a Hotel in Singapore; that he was earning 2000 Singapore Dollars per month; that as his children's school was closed for holiday, he planned to make a trip to his native place, Sakkarakottai Village, Ramanathapuram District, Tamil Nadu, India; that from Singapore he reached Malaysia with his family members on 22.11.2015; that when they were waiting at Kuala Lumpur airport, an unknown person approached him and requested to carry some gold items of foreign origin having 24 carat purity by way of concealment; that he was offered Rs. 30,000/- for the same; that lured by the money, he accepted the deal; that unknown person

handed over the same gold items to him and he kept the same in his pant pocket and ticket pocket of his pant; that he reached Trichy airport on 22.11.2015 by Air Asia Flight No. AK 27; and that after completion of immigration formalities, when he tried to come out through Green Channel, the officers intercepted and recovered Gold items as detailed in the Mahazar. The matter was adjudicated, vide the aforementioned Order-in-Original dated 25.10.2016. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), which has been partially allowed as mentioned above.

3. The revision application states that the gold ornaments were worn by the female members of the applicant at the time of their arrival at Trichy airport; that he did not conceal the gold ornaments; that the Mahazar contains a concocted version of events; that gold is not a prohibited item; and that the gold items should be permitted to be re-exported.

4. In the personal hearing held on 08.08.2023, in virtual mode, Sh. Kulashekharan appeared on behalf of the Applicant Sh. Mohd. Sadiq. He stated fairly that the case is an old one and he has only a few papers with him. Upon being asked to show sufficient cause for condonation of delay in filing the RA as no supporting documents for the medical reasons cited have been attached, he stated that he had none. He sought a lenient view, despite the same. No one appeared from the respondent's side nor has any request for adjournment of PH been received. Therefore the matter is taken up for disposal.

5.1 The Government has carefully examined the matter.

5.2 The Government observes that, in terms of sub-section (2) of the Section 129DD, a revision application shall be made within three months from the date of the communication of the order against which the application is being made. In the present case, the OIA impugned herein was received by the Applicant on 20.12.2017. The instant revision application has been filed on 18.06.2018, after a period of more than 5 months from the date of receipt. 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, proviso to said sub-section (2) provides discretion to the Government to 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 present case, the reason cited for non filing of the revision application within the normal period of 3 months is

the ill health of the Applicant and his wife, however, the same has not been substantiated with any documentary evidence. When specifically asked during P.H regarding the grounds on which condonation of delay was sought, the authorised representative could not provide any. Therefore, the Applicant has failed to establish that he was prevented by sufficient cause from presenting the application within the normal period of 3 months. Hence, the application is liable to be rejected on this ground alone, without going into the merits of the case.

6. In view of the above, the revision application is rejected.

Shubhagata Kumar
24/8/23

(Shubhagata Kumar)

Additional Secretary to the Government of India

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Order No. 208/23-Cus dated 25-8-2023

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Sh. S. Janakiraman & P. Kulasekaran, "Time Tower" Room No.4, II Floor, 169/84, Gengu Reddy Road, Egmore, Chennai-600008..
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

Praveen Negi
25/08/2023

ATTESTED
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