

SPEED POST



F. No. 372/07/B/EZ/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.. 21/10/24..

Order No. 219 /24-Cus dated 21-10-2024 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 No. 03/CUS/GHY(A)/COMMR/GHY/2023 dated 03.01.2023, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati.

Applicant : Shri Ganesan, Chennai

Respondent : The Commissioner of Customs (Preventive), Shillong (Meghalaya)

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ORDER

A Revision Application No. 373/07/B/EZ/2023-RA dated 18.05.2023 has been filed by Shri Ganesan, Chennai (hereinafter referred to as the Applicant/passenger) against the Order-in-Appeal No. 03/CUS/GHY(A)/COMMR/GHY/2023 dated 03.01.2023, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Guwahati has upheld the Order-in-Original No. COM/CUS/ADDL.COMMR/91/2022 dated 31.03.2022 of the Additional Commissioner of CGST, Shillong.

2. Brief facts of the case are that on 29.02.2020 at about 1445 hrs, the CISF personnel posted at Imphal detected two (02) pieces of semi-finished gold of foreign origin; one in bangle form and the other in chain form, from the possession of one Kolkata bound Indigo flight passenger Shri Ganesan of Chennai, the Applicant in this case. The two semi-finished gold pieces were detected during frisking at the Security Hall Area. The CISF personnel handed over the Applicant along with the detected semi-finished gold pieces to the Superintendent (A/S), Customs Division, Imphal for further necessary action.

3. On being asked by the Customs officers, Customs Division, Imphal, to produce any licit document in support of his legal possession, importation and transportation of the said gold pieces, the Applicant could not produce the same. The Customs officers then called one local goldsmith to the Customs office for verification of the two pieces of semi-finished gold of foreign origin. The goldsmith in presence of the Customs officers and two independent witnesses verified the gold pieces and gave a certificate of genuineness of the gold pieces of foreign origin. The recovered semi-finished gold of foreign origin in bangle and chain form weighing 132.0 grams and 200.0 grams respectively were found to be of 24 carat purity. The value of the seized gold pieces totally weighing 332 grams was estimated at Rs. 14,11,996/-. The recovered two gold pieces were seized under Section 110 of the Customs Act, 1962 under a Panchanama for further action.

4. In the voluntary statement recorded on 29.02.2020 before the Customs officers of Divisional Preventive Unit, the Applicant inter-alia stated that he is a businessman by profession and that he was the owner of the seized contraband gold pieces. He also stated that he came to Imphal on 26.02.2020 by road and went straight to Moreh on the same day. He stayed in a hotel at Moreh, the name of the hotel was not known to him, and that, he came to Imphal to tour Moreh and Tamu and also, to look for any potential business prospect. That, upon hearing that gold was cheap at Tamu, Myanmar, he decided to buy some gold pieces from Tamu, Myanmar for his daughter's marriage. So, he visited Tamu, Myanmar on 27.02.2020 and bought the two semi-finished gold pieces from a shop there. He stated that he left Moreh on 29.02.2020 and went directly to the Imphal international Airport for onward journey to Kolkata and was wearing the semi-finished gold pieces as ornaments. In his statement, he also categorically stated that he had no documents in respect of the seized gold pieces.

5. After due process of law, the adjudicating authority vide the aforementioned Order-in-Original dated 31.03.2022, confiscated the impugned gold weighing 332.0 grams valued at Rs. 14,11,996/- under Section 111(b), (d), and (e) of the Customs Act, 1962 with an option to redeem the same on payment of Redemption fine of Rs. 7,00,000/- and payment of the relevant duty, cess and other relevant charges under Section 125(2) of the Customs Act, 1962. A penalty of Rs. 1,00,000/- was also imposed on the Applicant under Section 112(b)(i) of the Customs Act, 1962. Aggrieved, the Applicant filed appeal before the Commissioner Appeals who has upheld the Order-in-Original No. COM/CUS/ADDL. COMMR/91/2022 dated 31.03.2022 and rejected the appeal vide impugned OIA dated 03.01.2023. Aggrieved by the OIA, the Applicant filed this Revision Application.

6. The instant revision application has been filed mainly on the grounds that the order of the lower authority is against law, weight of evidence, and probabilities of the case; that gold is not prohibited item and according to the liberalized policy the gold can be released on payment of redemption fine and baggage duty; that if the purity is 998.4 it is below 24 carat; whether the gold chain and bangle type bracelet have any foreign marking and how they assessed that the gold was foreign origin;

that the Applicant had not smuggled the gold from Myanmar to Kolkata. The prayer is to set aside the impugned O-I-A, to permit the release of the gold without duty and reduce the redemption fine and also reduce the personal penalty imposed.

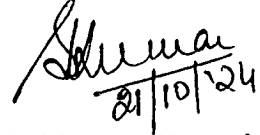
7. Personal hearing in the matter was fixed on 23.09.2024. Smt. Kamalamalar Palanikumar, Advocate appeared on behalf of the Applicant and reiterated the written submissions in RA. When the unexplained (or unsubstantiated) delay of 37 days was pointed out as well as the fact that "Sufficient Cause" has not been shown. She submitted that she will obtain the required documentary evidence from the Applicant and furnish the same. However, no submission has been received in this regard so far. No one appeared on behalf of the Respondent department and also no request for adjournment has been received from them. Therefore, it is presumed that Respondent has nothing to add in the matter.

8. On examination of the relevant case records, it is observed that the impugned Order-in-Appeal dated 03.01.2023 was issued on 09.01.2023 and received by the Applicant on 12.01.2023 as admitted by him. The revision application has been filed on 18.05.2023. Thus, there is an inordinate delay of around 37 days in filing revision application beyond the normal period of limitation. In the application for condonation of delay filed by the Applicant, the reason cited for the delay has been attributed due to his health issues and financial problem. However, the above claim is not substantiated by any supporting document or proof in the matter. Therefore, the said claim of the Applicant cannot be considered as "sufficient cause" for the delay.

9. 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) of the Section 129DD of the Customs Act, 1962 provides discretion to the Government to 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. 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.


21/10/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

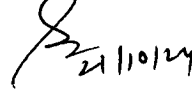
Shri Ganesan,
S/o Shri Palanisamy,
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Order No. 219 /24-Cus dated 21-10-2024

Copy to:

1. The Commissioner (Appeals), CGST, Central Excise and Customs, 3rd floor, GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001.
2. The Commissioner of Customs (P), N.E.R., Custom House, 110, M.G. Road, Shillong, Meghalaya.
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED


21/10/24

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