

SPEED POST



F. No. 373/184/B/SZ/2020-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. 221/24-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 Airport. Cus. I. No. 156/2020 dated 23.07.2020, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Seyed Afthahir, Chennai

Respondent : The Principal Commissioner of Customs, Chennai-I

.....

ORDER

Revision Application No. 373/184/B/SZ/2020-RA dated 13.08.2020 has been filed by Shri Seyed Afthahir, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal Airport. Cus. I. No. 156/2020 dated 23.07.2020, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant and upheld the Order-in-Original of the Joint Commissioner of Customs (Adjudication-AIR), Chennai Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai, bearing No. 05/2020-21-Commissionerate-1 dated 28.04.2020.

2. Brief facts of the case are that on 22.07.2019, the Applicant, an Indian passport holder, while arriving into India at Anna International Terminal of Chennai Airport, Meenambakkam, Chennai from Malaysia, was intercepted by the officers of Air Intelligence Unit (AIU) of Customs, Chennai Airport when he had opted for green channel at the exit of the Arrival Hall along with one hand baggage and one checked-in baggage viz., one brown colour carton box on a reasonable suspicion that he might be carrying gold/dutiable goods/contraband or gold jewellery either in his baggage or on his person. During his search, two gold bits of 24 carat purity weighing 60 grams were recovered from his pant pocket. Further, on persistent questioning, the passenger admitted about concealing about concealing gold in semi fluid form in his rectum and he ejected three bundles wrapped with black colour adhesive tape. Mr. B. Mohan Achari, a Government approved assayer, was called to examine and extract the gold from the brown colour rubbery spread, which yielded 353 grams gold ingot of 24 carat purity. In all, the gold bits & the gold ingot, totally weighing 413 grams of value 14,95,886/-, were seized under a mahazar since the Applicant did not possess any valid document for its legal import and attempted to smuggle the gold by way of concealment and non-declaration to the Customs.

3. The Applicant in his voluntary statement immediately after the seizure, stated that the recovered gold cut bits and three bundles of the spread containing gold were given to him by an unknown person outside the Kuala Lumpur Airport with instructions to smuggle the same by way of concealment to avoid Customs detection and to hand over to a person outside Chennai Airport, who would identify him by his photograph and would give him Rs.

3,500/-. As the Applicant attempted to smuggle the gold by concealing and not declaring to Customs at Chennai Airport and was not in possession of any valid document/permit/license for the legal import of impugned gold into India, the impugned gold weighing 413 grams of 24 carat purity and valued at Rs. 14,95,886/- alongwith the material object viz. adhesive tapes (NCV) were seized under a Mahazar under Section 110 of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 for further action. The Applicant vide his letter dated 22.07.2019 requested for adjudication of the case without issue of show cause notice.

4. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No. 05/2020-21-Commissionerate-1 dated 28.04.2020 adjudicated the case by absolutely confiscating the one gold ingot of 24 carat weighing 353 grams and two gold bits of 24 carat weighing 60 grams, totally valued at Rs. 14,95,886/-, recovered from the Applicant, under Section 111(d) and 111(l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 along with material objects (NCV) used to conceal the impugned gold viz. adhesive tape under Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 1,50,000/- was also imposed on the Applicant under Section 112(a) of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai, which has been rejected. Aggrieved by the O-I-A, the Applicant filed this Revision Application.

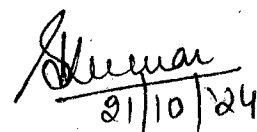
5. The above revision application has been filed mainly on the grounds that the order of adjudicating authority is against law, weight of evidence and circumstances and probabilities of the case; that gold is not a prohibited item and according to the liberalized policy, the gold can be released on payment of redemption fine and baggage duty; that no declaration card was provided; that the adjudicating authority ought to have allowed redemption of the seized gold. The prayer is to set aside the impugned Order-in-Appeal, the impugned gold items be permitted for re-export/released and that the penalty be reduced.

6. Personal hearing in the matter was fixed on 14.10.2024. Smt. P. Kamalamalar, Advocate appeared on behalf of the Applicant and she was informed that the mandatory

fees required to accompany the revision application has been short-paid and needs to be rectified so that the RA can be taken up for disposal. As per her request, two days time was granted to deposit the same. However, no response has been received in this regard till date. No one appeared on behalf of the Respondent department and also no request for adjournment has been received in the matter. Therefore, it is presumed that the department has nothing to add in the matter.

7. The Government has examined the matter. As per sub-section 3(b) of Section 129DD, *ibid*, a revision application shall be accompanied by a fee of Rs. 1,000/- when the amount of duty and interest demanded, fine or penalty levied by an officer of Customs in the case to which the application relates is more than one lakh rupees. The use of word 'shall' in the said sub-section (3) makes it apparent that the requirement of fees is mandatory. It is observed that the Applicant has incorrectly paid the RA fee of only Rs. 200/- as per sub-section 3(a) of Section 129DD, even though penalty involved, in the subject case, is in excess of Rs. 1,00,000/-. The Applicant has, till date, failed to pay the balance amount of Rs. 800/- despite being advised to do so vide letter dated 03.10.2024 and during the personal hearing on 14.10.2024. Therefore, the Government holds that the subject revision application is not maintainable as it is not accompanied by the requisite fee, as required under Section 129DD(3).

8. The revision application is, accordingly, rejected as non-maintainable, without traversing the merits of the case.


21/10/24

(Shubhagata Kumar)
Additional Secretary to the Government of India

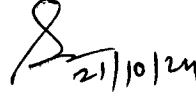
Shri Seyed Afthahir,
S/o Shri Liyagath Ali,
Old No. 23, New No. 24,
Dera Venkatasamy Street,
Triplicane, Chennai – 600 005

Order No. 221 /24-Cus dated 21-10-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3rd floor, New Custom House, GST Road, Meenambakkam, Chennai – 600016
2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
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

सरबजीत सिंह / SARABJEET SINGH
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor., B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place,
New Delhi-110066