

SPEED POST



F. No. 373/264/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. 20.11.24.

Order No. 933/24-Cus dated 20-11-2024 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. TCP-CUS-000-APP-82&83-20 dated 24.11.2020, passed by the Commissioner of CGST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Shri Mohamed Saleem, Chennai.

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli

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ORDER

Revision Application No. 373/264/B/SZ/2020-RA dated 07.12.2020 has been filed by Shri Mohamed Saleem, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-82&83-20 dated 24.11.2020, passed by the Commissioner of CGST, Service Tax & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has rejected the appeal filed by the Applicant and allowed the appeal of the Respondent department by enhancing the penalty imposed on the Applicant from Rs. 48,000/- to Rs. 1,50,000/- under Section 112(a) and 112(b) of the Customs Act, 1962 against the Order-in-Original No.311/2019 dated 14.10.2019 passed by the Assistant Commissioner of Customs, International Airport, Sembattu, Tiruchirappalli.

2. Brief facts of the case are that, the Applicant, an Indian passport holder, arrived from Kuala Lumpur on 11.04.2019, at Tiruchirappalli Airport. He was intercepted by the officers of Air Intelligence Unit (AIU), Trichy, who were keeping surveillance over the passengers arriving from Kuala Lumpur, when he was attempting to exit through the green channel in a suspicious manner. The AIU officers verified with the Customs baggage officers and found that the Applicant had neither filed any Customs declaration form nor declared, any dutiable goods to them. When the officers asked him whether he had brought any valuable or gold in any form with him either in person or in his baggage, he replied in the negative. Not satisfied with his reply, the officers examined him and his baggage and found one unfinished gold chain of 24 carat purity weighing 150 grams valued at Rs. 4,80,000/- in a small purse kept in his pant ticket pocket.

3. The Applicant in his voluntary statement dated 11.04.2019 recorded under Section 108 of the Customs Act, 1962 inter-alia stated that he came to Kuala Lumpur Airport to take flight to India; that one unknown person approached him and informed him that he had a gold item with him and requested him to carry the gold to be handed over to his accomplice waiting outside Trichy Airport for a commission of Rs. 10,000/-; that he accepted to carry the gold chain as he is in poverty; that he did not possess any bill for the purchase of the gold chain; that he concealed the gold item in his pant ticket pocket; that he opted for green channel and the Customs officers searched and recovered the gold

item under the Mahazar; that the said gold not belonged to him; that he had concealed the gold to evade payment of Customs duty; that he did not possess license or permit for import of gold; that he did not possess any foreign currency for payment of Customs duty on the gold and that finally he admitted his offence. As the Applicant attempted to smuggle the gold by concealing and not declaring to Customs at Trichy Airport and was not in possession of any valid document/permit/license for the legal import of impugned gold chain alongwith the material object viz. pink colour small purse was seized under a Mahazar under Section 110 of the Customs Act, 1962 for further action.

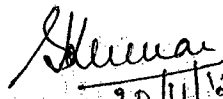
4. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No.311/2019 dated 14.10.2019 adjudicated the case by absolutely confiscating the one unfinished gold chain of 24 carat purity weighing 150 grams and valued at Rs. 4,80,000/-, seized from the Applicant, under Section 111(d), 111(i), 111(l) and 111(l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 along with material object used to conceal the impugned gold viz. the pink colour small purse under Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 48,000/- was also imposed on the Applicant under Section 112(a) of the Customs Act, 1962. Aggrieved, Both the Respondent department and the Applicant filed appeals before the Commissioner of Customs (Appeals-I), Chennai, who has rejected the appeal of the Applicant and allowed the appeal of the Respondent department by enhancing the penalty imposed on the Applicant from Rs. 48,000/- to Rs. 1,50,000/- under Section 112(a) and 112(b) of the Customs Act, 1962 vide above said O-I-A dated 24.11.2020. 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 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 item be permitted for re-export/released and that the penalty be set aside/reduced.

6. Personal hearings in the matter were fixed on 16.10.2024 and 25.10.2024. But no one appeared from the Applicant's side. On behalf of the Applicant, Smt. P. Kamalamalar, Advocate vide letter dated 25.10.2024 reiterated the written submission and requested to pass orders accordingly. Shri A. Sivakumar, Superintendent, Customs Trichy Legal appeared on behalf of the Respondent on 16.10.2024 and submitted that the O-I-A is legal and proper and should be upheld.

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 letters dated 03.10.2024 and 18.10.2024. 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.


20/11/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Mohamed Saleem,
S/o Shri Mohideen,
Flat F2, Plot 132, Sri Krishna Nagar,
9th Street, Maduravoyal,
Chennai – 600 095

Order No. 233 /24-Cus dated 20-11-2024

Copy to:

1. The Commissioner of CGST, Service Tax & Central Excise (Appeals), Tiruchirappalli, No. 1, Williams Road, Cantonment, Tiruchirappalli-620001
2. The Commissioner of Customs (Preventive), No.1, Williams Road, Cantonment, Tiruchirappalli-620001
3. Sh. S. Palanikumar, Kameshwaran & P. Kamalamalar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
6. ✓ Spare Copy
7. ✓ Notice Board

ATTESTED

Shailendra
(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली - 110 001