

F. No. 373/89/B/2019-RA  
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**SPEED POST**



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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...13/10/23...

Order No. 234-236/23-Cus dated 12-10-2023 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 Applications, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. 179 to 181/2018-TRY(CUS) dated 27.09.2018, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicants : Sh. S. Jagannathan, Chennai  
Sh. K. Kalidass, Ramanathapuram  
Sh. M. Shahul Hameed Badhusha, Madurai

Respondent : The Commissioner of Customs (P), Tiruchirappalli

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**ORDER**

Revision Applications, bearing Nos. 373/89/B/2019-RA, 373/90/B/2019-RA & 373/91/B/2019-RA all dated 08.04.2019, have been filed by Sh. S. Jagannathan, Chennai, Sh. K. Kalidass, Ramanathapuram & Sh. M. Shahul Hameed Badhusha, Madurai (hereinafter referred to as the Applicant-1, Applicant-2 & Applicant-3, respectively) against the Order-in-Appeal No. 179 to 181/2018-TRY(CUS) dated 27.09.2018, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has upheld the Order-in-Original of the Joint Commissioner of Customs, Madurai, bearing no. MDU-CUS-JC-13-2017 dated 22.05.2017, ordering absolute confiscation of crude gold chain of foreign origin, weighing 299.700 grams, totally valued at Rs. 7,95,703.50/-, crude gold chain of foreign origin, weighing 277.800, totally valued at Rs. 7,37,559/- & crude gold chain of foreign origin, weighing 299.800 grams, totally valued at Rs. 7,95,969/- recovered from Applicant-1, Applicant-2 & Applicant-3, respectively. Besides, penalties of Rs. 1,00,000/- each were imposed on all the Applicants under Section 112(a) of the Customs Act, 1962.

2. Brief facts of the case are that officers of Directorate of Revenue Intelligence, Zonal Unit, Chennai (CZU-DRI) based on a specific intelligence identified and intercepted a group of passengers, coming from Colombo to Madurai on 03.10.2015. On being enquired as to whether they were carrying any gold from Colombo in their baggage or in their person, all the seven passengers (including all the Applicants herein) replied in negative and produced their Customs Declaration Form, which were duly filled-in and signed wherein no one had declared any value against the column "Total value of dutiable goods being imported'. Upon the search of their baggage crude gold chains as mentioned above were recovered from the Applicants. Further, during the course of examination, one group of officers proceeded to the Flight and rummaged the Flight systematically and found one plastic bag without any tag under a seat in abandoned condition. After detailed examination of the said abandoned bag they found to contain foreign marked gold bars/ chains of foreign origin weighing 20299.500 grams, collectively valued at Rs.

5,38,95,172/- . On being enquired, the said seven passengers stated that they did not have any documents for purchase/import of the said gold recovered from their baggage.

Applicant-1, in his statement dated 07.10.2015, recorded under Section 108 of the Customs Act, 1962, inter-alia, stated that he used to go to Sri Lanka from Chennai or Madurai approximately ten times a month; that sometimes, when required, brokers from Chetti Street, Colombo would send gold chains and on landing in India, their representatives would receive the gold and give money; that a few months ago the cloth consignment taken by him was seized by the Sri Lankan Customs and he required lot of money in that case; that hence he started bringing gold to compensate for the loss; that only occasionally he would bring gold chain and he would get Rs. 2000/- for 50 grams and he would bring only 50 grams; and that only that time he brought 300 grams chain for more money; that he had not paid any duty so far and he had indulged in the activity only due to his family situation.

Applicant-2, in his statement dated 07.10.2015, recorded under Section 108 of the Customs Act, 1962, inter-alia, stated that five years ago when he was working as a mason, he had gone to Sri Lanka a few times as Kuruvi (frequent flyer); that since he could not go for work, his family was short of money, hence, he started going to Sri Lanka as Kuruvi (frequent flyer) again; that he used to go to Sri Lanka a few times a month from Chennai; that a few weeks ago when he stayed in Wilson Street, Colombo, a broker approached him and told him that if he took 50 grams of gold chain to India he would get Rs. 2000/- and he accepted the offer; that the broker told him that he (the broker) would send his photo through WHATSAPP and a person would identify him in front of the Chennai Airport and would received the chain on payment of his commission; that he had handed over the gold twice in that way.

Applicant-3, in his statement dated 07.10.2015, recorded under Section 108 of the Customs Act, 1962, inter-alia, stated that he had left Madurai on 01.10.2015 to Bangkok via Colombo and reached Bangkok on 02.10.2015 morning; that he had already informed his friend that he was in need of money for buying gold ornaments for his sister's marriage during December; that in the evening of 02.10.2015 after arranging money from his friend for buying gold ornaments for his sister's marriage, they went to gold bazaar

and purchased a simple gold chain weighing 249.990 grams; that on the next day i.e. on 03.10.2015 he started from Bangkok to Madurai via Colombo and reached Madurai airport. The case was adjudicated by original authority who ordered for absolute confiscation of gold and imposed penalty on the Applicants as mentioned above. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which were rejected as mentioned above.

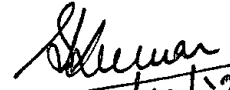
3. The revision application has been filed by all the Applicants mainly on the grounds that Applicant-1 did not even cross the immigration before that he was intercepted by the DRI officers who are not proper officers of customs to receive declaration; that Applicant-1 was not allowed to declare the goods under section 77 of Customs Act; and that order of re-export could have been ordered after redemption of goods.

4. Personal hearing was fixed on 22.08.2023 & 29.08.2023. In the personal hearing held on 29.08.2023, Sh. A. Ganesh and Sh. Ronak R., Advocates appeared on behalf of the Applicants and stated that in terms of the Canon India Judgement, DRI officers are not 'proper officers' under the Customs Act; that his clients were intercepted even before entering the arrival baggage hall; that the impugned gold should not have been absolutely confiscated but given an option to redeem against RF, even if high; that penalty amount should be reduced; that absolute confiscation is not warranted. No one appeared from the side of Department. As such, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. The Applicants had mentioned in their revision applications that the date of communication of the Order-in-Appeal is 12/13.10.2018. The revision applications have been filed on 08.04.2019 i.e. almost three months after the normal period of three months for filing the application. The Government observes that, in all the cases, identically worded applications for condonation of delay have been filed and the delay has been sought to be explained in following terms:

" The petitioner submits that his counsel had prepared the revision petition but the petitioner submits that he is unable to sign and file the revision in time due to illness."

Thus, the cause of delay is stated to be ill health of all the Applicants. However, no evidence for this has been placed on record. Hence, the COD applications are unsubstantiated. It is thus quite singular that all the Applicants fell ill at exactly the same time and that too apparently for the same duration which stretches credibility. It would thus appear that the request for condonation of delay has been made in a mechanical and perfunctory manner, without any consideration for the factual position. In the conspectus of these facts and circumstances, the Government is constrained to hold that the applicants have been unable to show "sufficient cause" as required under Section 129DD of the Customs Act, 1962. The revision application is thus rejected on grounds of limitation without traversing the merits of the case.

  
12/10/23

(Shubhagata Kumar)

Additional Secretary to the Government of India

1. Sh. S. Jaganathan  
S/o Sh. Subramani  
No. 18, Kamarajar Salai  
Anakaputhur, Chennai-600070
2. Sh. K. Kalidass  
S/o Sh. Karmegam  
D.No. 6A, Near Housing Board  
Kothanar Street  
Ramanathapuram-623501
3. Sh. M. Shahul Hameed Badhusha  
S/o Mohammed Basheer  
3/408, Gomathipuram  
7<sup>th</sup> Main Road  
Madurai-625020

Order No. 234-236/23-Cus dated 12-10-2023

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli-620001.

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2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Sh. A. Ganesh, Advocate, F. Block 179, IV Street, Annanagar, Chennai-600102.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED

Shailendra  
13/10/23

(शैलेन्द्र कुमार मीना)  
(Shailendra 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