

SPEED POST



F. No. 373/205/B/SZ/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..15/11/23:

Order No. 274 /23-Cus dated 15-11-2023 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 AIRPORT. C.Cus. I. No. 19/2018 dated 06.02.2018, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Sahul Hameed Mydeen Batcha, Thanjavur

Respondent : Pr. Commissioner of Customs, Chennai-I

ORDER

Revision Application No. 373/205/B/SZ/2018-RA dated 06.08.2018 has been filed by Sh. Sahul Hameed Mydeen Batcha, Thanjavur (hereinafter referred to as the Applicant) against the Order-in-Appeal AIRPORT. C. Cus. I. No. 19/2018 dated 06.02.2018, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has modified the order of the Joint Commissioner of Customs, Airport, Chennai, bearing no. 119/2017-18-AIRPORT dated 29.09.2017, by setting aside the penalty of Rs. 15,000/-, imposed under Section 114AA of the Customs Act, 1962 on the Applicant herein. Vide the aforementioned Order-in-Original, 02 nos of semi-finished gold chains of 24 carat purity, totally weighing 224.5 grams, collectively valued at Rs. 6,42,070/-, recovered from the Applicant, were confiscated under Section 111(d) & 111(l) of the Customs Act, 1962. Besides penalties of Rs. 65,000/- & Rs. 15,000/- were imposed on the Applicant, under Section 112(a) & 114AA, respectively, of the Act, *ibid*.

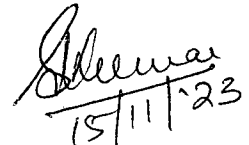
2. Brief facts of the case are that, on 04.07.2017, the Applicant was intercepted by Customs officers at Chennai airport upon his arrival from Dubai, at the exit of the arrival hall after he had passed through the Green Channel. Upon questioning whether he was carrying any gold/dutiable items/contraband, he replied in the negative. During the course of his personal search and his baggage, nothing incriminating was found. However, since the Applicant was noticed to be nervous he was subjected to sustained questioning upon which he admitted to having concealed gold inside his rectum and volunteered to eject the same. Thereafter, two pouches were ejected by the Applicant in the toilet. On cutting open the pouches, each was found to contain one yellow-coloured metal chain each, wrapped with transparent adhesive tape. The Government of India approved gold appraiser examined the aforesaid recovered items and certified them to be two nos of semi-finished gold chains of 24 carat purity, totally weighing 224.5 grams and collectively valued at Rs. 6,42,070/-. On being questioned whether he had any valid permit/license for the legal import of the gold, he replied in the negative. The original authority, vide the aforementioned Order-in-Original dated 29.09.2017, confiscated the gold absolutely and imposed penalties under the Customs Act, as mentioned above. Aggrieved, the Respondent filed appeal before the Commissioner (Appeals) who modified the Order-in-Original as mentioned above.

3. The revision application has been filed, mainly, on the grounds that the lower authority failed to see that the Applicant proceeded towards the Red Channel; that he was not allowed to declare the gold under Section 77 of the Customs Act, 1962; that he did not cross the Customs barrier and under that circumstances the import itself was not completed; that he is working abroad and is eligible to import gold; that he is not a frequent traveller; that import of gold is not prohibited; and that gold be permitted for re-export on minimum payment of fine and penalty.

4. Personal hearings in the matter were fixed on 15.05.2023, 24.05.2023, 02.06.2023, 07.08.2023 & 29.08.2023. No one appeared for either side except for the last hearing date. Sh. A. Ganesh, Advocate for the Applicant submitted that his client was an eligible passenger to import gold as per rules; that there is no evidence on record that Section 102 of the Customs Act was followed; that his client is the owner of the goods which have been brought though in a concealed manner; that his client should be given the option to redeem the goods against RF rather than absolute confiscation since gold is not a prohibited item and especially since his client was eligible to import gold.

5. The Government has carefully examined the matter. As per sub-section (2) of Section 129DD *ibid*, a revision application shall be made within 03 months from the date of communication to the Applicant of the order against which the application is being made. In this case, the date of communication of the Order-in-Appeal is stated to be 10.02.2018, as per Form No. CA-8, whereas the revision application has been filed on 06.08.2018 i.e. with a delay of 02 months and 26 days and the only reason cited for non filing of the revision application within the normal period of 3 months is the ill health of the Applicant, however, the same has not been substantiated with any proof or evidence, nor was any reason given during the personal hearing which could amount to "sufficient cause" being shown for condonation of delay. Therefore in terms of proviso to sub-section (2) of Section 129DD, the applicant has failed to show sufficient cause for the delay in filing the RA and 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.


15/11/23

(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Sahul Hameed Mydeen Batcha
S/o Sh. Mydeen Batcha,
No. 291, New No. 3, Pallivasal Street,
Pasupathi Koil Post, Papnasam Taluk,
Thanjavur-614206

Order No. 274 /23-Cus, dated 15-11-2023

Copy to:

1. The Commissioner of Customs (Appeals-I), 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
2. Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai-600027.

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


15/11/2022

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