

**SPEED POST**



F. No. 373/153/B/SZ/2019-RA  
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..15/11/23..

Order No. 276/23-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 Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal C.Cus-I No. 52/2019 dated 12.02.2019 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Liyakat Ali Khan, Madurai

Respondent : Pr. Commissioner of Customs, Airport, Chennai-I

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**ORDER**

A Revision Application, bearing No. 373/153/B/SZ/2019-RA dated 06.05.2019, has been filed by Shri Liyakat Ali Khan, Madurai (hereinafter referred to as the Applicant), against the Order-in-Appeal C.Cus-I No. 52/2019 dated 12.02.2019, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the Order-in-Original of Joint Commissioner of Customs (Adjudication – AIR), Commissionerate-I, Chennai Airport and Air Cargo Complex, Chennai, bearing no. 28/2018-19(Commissionerate-I) dated 19.05.2018, except to the extent of setting aside the penalty of Rs. 5,000/- imposed under Section 114AA of the Customs Act, 1962.

2. Vide aforementioned Order-in-Original dated 19.05.2018, the following has been ordered:

- (i) Absolute confiscation of the seized 3 nos. of gold bars totally weighing 276.8 grams and totally valued at Rs. 8,40,642/- under Section 111(d) and (l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992;
- (ii) absolute confiscation of the material objects viz. blue colour rectangular box "SIGNOWARE", light blue colour hot case "HOMIO" and three plastic covers used to conceal gold bars under Section 119 of the Customs Act, 1962;
- (iii) imposition of penalty of Rs. 85,000/- on Applicant under Section 112 of the Customs Act, 1962;
- (iv) imposition of penalty of Rs. 5,000/- on Applicant under Section 114AA of the Customs Act, 1962.

3. Brief facts of the case are that the Applicant arrived from Singapore at Anna International Terminal, Chennai airport, on 31.01.2018, and was intercepted by the Customs officers at the exit point. Upon questioning as to whether he was carrying any gold/contraband either in his baggage or in his person, he replied in the negative. Upon examination of his baggage, 3 nos. of gold bars totally weighing 276.8 grams and totally valued at Rs. 8,40,642/- were found concealed in sweet boxes. The Applicant did not declare the possession of gold bar to Customs. The Applicant, in his statement, recorded under Section 108 of the Customs Act, 1962, immediately after the seizure, stated inter-alia that he was not in possession of any legal/valid documents for the import of the gold;

that the gold was given to him by an unknown person outside the Singapore airport who requested him to carry the same by concealing them in the sweet boxes to be handed over a person viz., Sheik Ali at Burma Bazar, Chennai; that he was offered Rs. 8,000/- for carrying the above said gold bars; that he was well aware that smuggling of gold by way of concealment, without declaration to Customs and without payment of duty is an offence; that he committed this offence for monetary benefit and requested to be pardoned. Further, in the personal hearing on 19.04.2018, the Applicant submitted that the impugned gold belongs to him, he brought the same for the purpose of his daughter's marriage and however, he had not produced any receipt as evidence in this regard.

4. The revision application has been filed, mainly, on the grounds that there is no mis-declaration and concealment; that Applicant has neither crossed the Green Channel nor concealed the impugned goods; that he is the owner of the gold and had brought it for his daughter's marriage; that confiscation of the gold bars is unwarranted and the same ought to have been ordered for release on payment of Customs duty; that both the lower authorities erred in imposing penalty and confiscating the gold bars without an option to release under Section 125 of the Customs Act, 1962. As such, it has been prayed that the impugned order may be set aside and re-export may be allowed and personal penalty be set aside.

5. Personal hearings were fixed on 28.08.2023, 20.09.2023 & 11.10.2023 respectively. However, no one appeared for either side nor any request for adjournment has been received. However, the Assistant Commissioner of Customs (Legal & Review), Chennai-I vide letter dated 29.07.2020, has submitted that the passenger has given a voluntary statement substantiating the mahazar and the admissibility accepted by the lower adjudicating authority with reasons of admissibility recorded in the Order-in-Original and Order-in-Appeal. The passenger has stated the tutored version in the Revision Application. The Commissioner (Appeals) had correctly passed the orders recording the reasons for his decisions in Order-in-Appeal. Both the authorities had passed reasoned orders. The petitioner had not retracted his voluntary statement to the investigating officer and the submission regarding retraction at the revisionary stage appears to be an afterthought to escape penalty.

6. The Government has carefully examined the matter. It is observed that the Applicant was intercepted at the exit gate. He himself had admitted to the recovery of gold bars from him and that he intended to clear the gold by way of concealment for monetary benefit of Rs. 8,000/-. As regards, the retraction made at later stage by the Applicant claiming that he is the owner of impugned goods, it is evident that the Applicant had not declared the possession of impugned goods, had been intercepted by the officers of Customs and, it is only upon search of his person that the concealment of the three gold bars in the sweet boxes came to light. The Applicant has admitted in his voluntary statement that the impugned goods did not belong to him and the same were brought for the monetary benefit; that he was aware that bringing impugned gold items and that the attempt to smuggle it by way of concealment & non-declaration to Customs, without possession of any valid permit/license/document, is an offence. The relevant sequence of events have been recorded in the Mahazar also substantiates the acts of Applicant's attempt to smuggle the confiscated goods. I rely on the judgement of *Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}*, wherein *Hon'ble Supreme Court held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}*, the *Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction*. In the present case, the Applicant has admitted his involvement in the case of smuggling due to lure of earning easy money. The admissions made are corroborated by other material on record, as discussed hereinabove. The Order-in-Appeal also does not contain anything to suggest that the Applicant was coerced into making the statement under section 108 or any evidence to establish licit ownership of the impugned goods. Therefore, there is no doubt that the statement tendered was voluntary. As such, it is evident that the impugned gold items did not belong to the Applicant as has been claimed by him subsequently appear to be an afterthought.

7. As per Section 123 of the Act, *ibid*, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person from whom goods are recovered. The Applicant did not declare the gold items, as stipulated under Section 77 of the Act, *ibid* and no documents evidencing ownership or licit purchase have been

produced. The Applicant has, thus, failed to discharge the burden placed on him in terms of Section 123, *ibid*. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government agrees with the lower authorities that the seized gold item was liable for confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant.

8. The Government observes that the original authority had denied the release of gold items on payment of redemption fine, under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)], that the option to release 'prohibited goods' on redemption fine is discretionary. Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], held that "*Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive.*" Further, the Hon'ble Delhi High Court in its order dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that "*.....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudging Officer*". Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

9. As regards the prayer for permitting re-export of the offending goods, the Government observes that a specific provision regarding re-export of articles imported in baggage is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of Deepak Bajaj vs Commissioner of Customs (P), Lucknow {2019(365) ELT 695(All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export under Section 80 of the Act, *ibid*. In this case, as already held, the Applicant had not made a true declaration under Section 77. Hence, there is no infirmity in the orders of lower authorities, on this count.

10. In the facts and circumstances of the case, the quantum of penalty imposed, under Section 112 ibid, is neither excessive nor harsh. In fact, keeping in view the manner of concealment, the original authority has been rather lenient in keeping the penalty limited to only around 10% of the value of the offending goods.

11. The revision application is, accordingly, rejected.

*Shubhagata Kumar*  
15/11/23

(Shubhagata Kumar)

Additional Secretary to the Government of India

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Order No. 276/22-Cus dated 15-11-2022

Copy to:

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2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
3. Shri Abdul Nazeer, Advocate, 65, New No. 120, Baracah Road, Varadhamma Garden, 3<sup>rd</sup> Street, Kilpauk, Chennai -600010.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy
7. Notice Board.

ATTESTED

*Sarabjeet Singh*  
15/11/23

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