

SPEED POST



F. No. 373/517/B/2019-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. 23/04/24

Order No. 96/24-Cus dated 22-04-2024 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. TCP-CUS-000-APP-087-19 dated 18.10.2019, passed by the Commissioner of CGST & Central Excise (Appeals), Tiruchirappalli.

Applicants : Smt. Sumithra, Sivaganga

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli

ORDER

Revision Application, bearing No. 373/517/B/2019-RA dated 03.12.2019, has been filed by Smt. Sumithra, Sivaganga (hereinafter referred to as the Applicant), against the Orders-in-Appeal No. TCP-CUS-000-APP-087-19 dated 18.10.2019, passed by the Commissioner of CGST & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Joint Commissioner of Customs, (Preventive), Tiruchirappalli, bearing no. TCP-CUS-PRV-JTC-010-19 dated 29.01.2019, ordering absolute confiscation of two unfinished gold bangles & one "unfinished unjoined gold rings forming a chain with hook of foreign origin" all of 24 carat purity, totally weighing 349.800 grams and collectively valued at Rs. 10,74,236/-, recovered from the Applicant under Sections 111(d), (i), (l) & (m) of the Customs Act, 1962. Besides, a penalty of Rs. 1,10,000/- was also imposed on the Applicant, under Section 112 (a) & (b) of the Act *ibid*.

2. Brief facts of the case are that the Customs officers intercepted the Applicant, on 06.07.2018, who upon her arrival at Tiruchirappalli from Kuala Lumpur was crossing the Green Channel in a suspicious manner. Upon verification it was found that she did not submit the Indian Customs Declaration Form and had not declared any dutiable items to Customs. When the officers asked the applicant whether she had any items to be declared to the Baggage Officers, she replied in the negative. Upon enquiry as to whether she had brought any gold or any other dutiable item in any form with her either in her person or in her baggage to which she replied in the negative. The Door Frame Metal Detector gave alarm with red light flashing. During the search of her person by a lady officer, with her consent, two unfinished gold bangles worn by her above the elbow and one unfinished and unjoined gold rings forming a chain with hook around her neck, fully covered by her dupatta to avoid detection were recovered. The Central Government approved gold assayer appraised the said gold items and certified them to be gold of foreign origin of 24 carat purity, totally weighing 349.800 grams and collectively valued at Rs. 10,74,236/-. In her statement dated 06.07.2018, recorded under Section 108 of the Customs Act, 1962, she stated *inter-alia* that she and her husband went to Malaysia on 03.07.2018 as tourists; that while they were returning on 06.07.2018, an unknown lady approached her at Kuala Lumpur Airport and requested them to hand over one gold chain, two bangles to her

(unknown lady) accomplice who would be waiting outside the Trichy airport; that initially she refused to accept it but the unknown lady requested again and insisted to take it; that she accepted to take it; that the unknown lady assured her to give a commission of Rs. 12,000/- on successful handing over the said gold items to her accomplice waiting outside the Tiruchirappalli Airport; that lured over the commission, she accepted the request and received the above said gold items; that the unknown lady asked her to wear the gold chain under the collar of the chudidar and asked her to wear the bangles in hand; that the unknown lady took her photograph in her mobile and sent the same through 'whatsapp' to her accomplice waiting outside the Tiruchirappalli airport; that after completion of the immigration at Tiruchirappalli airport, the Customs officials intercepted her and seized the said gold items under a Mahazar.

3. The revision application has been filed by the Applicant mainly on the grounds that the applicant made true declaration before the concerned officers at airport and nothing concealed nor misdeclared by the applicant; that re-export of the above gold jewellery were not at all considered by the lower authorities and further they have failed to consider that the value adopted by the lower authorities was not in order and the same was on higher side; that the applicant had opted red channel to prove her bonafideness that she has got dutiable goods; and that the applicant had bought the aforesaid gold jewellery to be given as gift for her daughter's wedding.

4. Personal hearing in the matter was held on 10.04.2024. Sh. Manimaran, Superintendent appeared for the Respondents and submitted that the OIA is legal and proper; that the applicant brought raw, unfinished gold of 24 carat purity for monetary benefit; that the confiscation is correct and OIA should be upheld. No one appeared for the side of applicant. The personal hearing was again scheduled for 22.04.2024 in order to give an opportunity to the applicant to be heard. However, no one appeared for the applicant.

5. The Government has carefully 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 repeatedly advised to do so. The revision application was filed long back but the requisite fee has still not been paid, despite letters and email advising them to do so. Therefore, the Government holds that the subject revision application is not maintainable as it is not accompanied by the requisite fee, as provided under Section 129DD(3). Not only has the applicant not responded to these communications, but have also chosen to forego the opportunity to be heard as discussed supra.

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

Shubhagata Kumar
22/4/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

1. Smt. Sumithra
W/o Sh. Ayothiraman
No. 10, Muthoorani Mudukuth Street
Karaikudi, Sivaganga
Tamil Nadu-630001.

Order No. 96/24-Cus dated 22-04-2024

Copy to:

1. The Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Sh. K. Mohamed Ismail, BABL, Advocate & Notary Public, New No. 102, Linghi Chetty Street, Chennai-600001.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED

Sarabjeet Singh
22/4/24