

SPEED POST



F. No. 373/57/B/SZ/2023-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... 13/12/2024

Order No. 24-3 /24-Cus dated 13/12/2024 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 Application under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. 43/2023-TRY(CUS)-APP dated 28.03.2023, passed by the Commissioner of Customs & Central Excise (Appeals), Coimbatore @ Tiruchirappalli.

Applicant : Smt. Sabarnisha, Ramanathapuram

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli

.....

ORDER

A Revision Application No. 373/57/B/SZ/2023-RA dated 16.08.2023 has been filed by Smt. Sabarnisha, Ramanathapuram (hereinafter referred to as the Applicant/passenger) against the Order-in-Appeal No. 43/2023-TRY(CUS)-APP dated 28.03.2023, passed by the Commissioner of Customs & Central Excise (Appeals), Coimbatore @ Trichy who has rejected the appeal of the Applicant and upheld the Order-in-Original No. 95/2020 dated 03.09.2020 passed by the Additional Commissioner of Customs (Preventive), Tiruchirappalli.

2. Brief facts of the case are that, the Applicant, an Indian Passport holder, arrived from Kuala Lumpur on 06.01.2020, at Trichy International Airport. She was intercepted by the officers of AIU, Airport, Trichy, when she was attempting to exit through Green Channel. The officers verified with the baggage officers and found that the Applicant had not declared any dutiable items to them. The AIU officers enquired from the Applicant as to whether she had brought any dutiable goods including gold, in any form, with her either in her person or in her baggage, the Applicant replied in the negative. During the search of her person in presence of a lady officer, the officer recovered yellow coloured metal ornaments concealed in person by the Applicant. The officers suspected all the yellow coloured metal ornaments to be made of gold. An approved government assayer after thorough examination appraised the recovered ornaments as detailed below:

Sl. No.	Description	Weight (in grams)	Value (in Rs.)
1.	One unfinished gold chain (24 carat)	79.700	3,26,053
2.	Eight gold chains (22 carat)	623.500	24,29,156
3.	One gold necklace (Aaram) (22 carat)	184.00	7,16,864
4.	Sixteen gold bangles (22 carat)	305.500	11,90,228
5.	Seven gold rings (22 carat)	17.200	67,011
6.	Six gold bracelet (22 carat)	181.00	7,05,176
7.	Five gold ear studs (22 carat)	52.300	2,03,761
	Total	1443.200	56,38,249

3. The total value of the above said recovered gold items weighing 1443.200 grams was Rs. 56,38,249/- and the Assayer issued a certificate of appraisal. Thereafter, the officers on the reasonable belief that the above said gold items recovered from the passenger, were attempted to be smuggled into India without any valid document in violation of the provisions of the Customs Act, 1962, without declaration and by concealment with an intention to evade payment of Customs duty, seized the gold items under the Mahazar under Section 110 of the Customs Act, 1962 for further action. A voluntary statement was recorded from the passenger under Section 108 of the Customs Act, 1962 wherein she had admitted her guilt and corroborated the version of the seizure. She was also arrested and further granted bail after furnishing a bail bond, surety bond and cash security of Rs. 1,00,000/-.

4. After due process of law, the original authority i.e. the Additional Commissioner of Customs (Preventive), Tiruchirappalli vide Order-in-Original No. 95/2020 dated 03.09.2020 ordered for absolute confiscation of seized gold items mentioned in the aforementioned table weighing 1443.200 grams and totally valued at Rs. 56,38,249/- under Section 111(d) and 111(i) of the Customs Act, 1962 and imposed penalty of Rs. 25,00,000/- on the Applicant under Section 112(b) of the Act, ibid and also appropriated the cash security amount of Rs. 1,00,000/- paid by the Applicant towards the penalty amount. Aggrieved, the Applicant filed appeal before the Commissioner of Customs & Central Excise (Appeals), Coimbatore @ Tiruchirappalli who has upheld the order of absolute confiscation of the impugned gold and penalty imposed on the Applicant and rejected the appeal of the Applicant vide above said Order-in-Appeal No. 43/2023-TRY(CUS)-APP dated 28.03.2023. Aggrieved by O-I-A, the Applicant filed this revision application.

6. The instant revision application has been filed mainly on the grounds that the order of the lower authority is against law, weight of evidence, and probabilities of the case; that gold is a restricted item and not a prohibited good; option ought to have been given for the release of impugned gold under Section 125 of the Customs Act, 1962 upon payment of redemption fine. The prayer is for the impugned Order-in-Appeal be set aside; that the impugned gold items be permitted for re-

export/released and also set aside or reduce the personal penalty under Section 112(b) of the Customs Act, 1962.

7. Personal hearings in the matter were fixed on 23.09.2024, 04.10.2024 and 20.11.2024. On 20.11.2024, Smt. Kamalamalar Palanikumar, Advocate appeared on behalf of the Applicant. In is on record, there is a delay of 37 days in filing the Revision Application and the only reason given in the condonation of delay application is 'health issues' without any supporting evidence for the same and that does not constitute "sufficient cause". She further submitted that the applicant is an eligible passenger and except for one chain of 24 carat purity, the rest of the gold was of 22 cart purity. The penalty imposed is too high and ought to have been less. Shri Shivakumar, Superintendent, Trichy (Legal) appeared on 20.11.2024 on behalf of the Respondent department and submitted that this is a case of concealment and non-declaration and requested that the O-I-A is proper and should be upheld.

8. The Government observes that the impugned Order-in-Appeal dated 28.03.2023 was received by the Applicant on 12.04.2023 as admitted by her. The revision application has been filed on 16.08.2023. Thus, there is an inordinate delay of around 37 days in filing revision application beyond the normal period of limitation. In the application for condonation of delay filed by the Applicant, the reason cited for the delay is simply 'health issues'. However, the above claim is not substantiated by any supporting document or proof of such illness. Therefore, the said claim of the Applicant cannot be considered as "sufficient cause" for the delay.

9. As per sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., revision application can be made within 3 months from the date of communication of the order against which the application is being made. However, in terms of the proviso to sub-section (2) of the Section 129DD of the Customs Act, 1962 provides discretion to the Government to allow an application to be presented within a further period of three months if the Government is satisfied that the Applicant was prevented by 'sufficient cause' from presenting the application within the normal period of three months. In the conspectus of the facts and circumstances of the case, the Government is constrained to hold that the applicant has 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.

10. The revision application is rejected as barred by limitation.

Shubhagata Kumar
13/12/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Smt. Sabarnisha,
W/o Shri Zulfikar Ali Bin Buruhan Deen,
Residing at No. 4/100A,
Muhamadhiya Street,
Vani, Ramanathapuram

Order No. 243 /24-Cus dated 13/12/2024

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), Coimbatore & Trichy, No.1, Williams Road, Cantonment, Tiruchirappalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600 001.
4. PPS to AS (RA).
5. Guard file.
- ✓ 6. Spare Copy
7. Notice Board

Shailendra Kumar Meena
ATTESTED

(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

