

**SPEED POST**



F. No. 373/14/B/2016-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 27/10/22

Order No. 328/22-Cus dated 27-10-2022 of the Government of India passed by Sh. Sandeep Prakash, 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 C.Cus-I No. 676/2015 dated 30.10.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Thufiq Rafiq, Chennai

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

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**ORDER**

A Revision Application, bearing No. 373/14/B/2016-RA dated 11.01.2016, has been filed by Sh. Thufiq Rafiq, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal C.Cus-I No. 676/2015 dated 30.10.2015, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs (Airport), Anna International Airport, Chennai bearing No. 764/2015-Batch B dated 28.07.2015, vide which 01 gold bar brought by the Applicant, weighing 100 grams and valued at Rs. 2,26,914/-, had been absolutely confiscated under Section 111(d), 111(e), 111(l), 111(m) and 111(o) of the Customs Act, 1962. Besides, penalty of Rs. 23,000/- was imposed on the Applicant, under Section 112(a) of the Act, *ibid*.

2. Brief facts of the case are that the Applicant (who is a British citizen) arrived, on 28.07.2015, from London. Upon examination of his check-in baggage, the Customs Officers found a Nokia Cell Phone inside a Burka in which one gold bar, weighing 100 gms, was concealed in place of battery. The Applicant did not declare the possession of gold bar in customs declaration form. Even when questioned, the Applicant denied the possession of gold bar. After being intercepted, the Applicant opted for spot adjudication and waived Show Cause Notice. The original authority, after hearing the Applicant, passed the aforesaid Order dated 28.07.2015, which has been upheld in appeal.

3. The revision application has been filed, mainly, on the grounds that the Applicant did not conceal or misdeclare the value of the gold bar and, therefore, the same should have been released on payment of duty; that the Applicant is an eligible passenger and he had brought the gold bar for his personal use; that he did not cross the Green Channel; that there is no seizure Mahazar drawn and prepared in the presence of two independent witnesses signed by the Applicant and the option to examine him and his baggage in the presence of Magistrate or a Gazetted Officer was not informed to him; and that the Assistant Commissioner erred in imposing penalty and confiscating the gold bar. Accordingly, it has been prayed that re-export may be allowed and penalty imposed may be waived.

4. Personal hearing was fixed on 14.11.2018, 03.10.2019, 24.08.2021, 31.08.2021, 26.10.2021, 06.10.2022 and 27.10.2022. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have already been granted, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. It is observed that the Applicant did not declare the gold item brought by him as stipulated under Section 77 of Customs Act, 1962, to the customs authorities at the airport. Further, the recovery of gold bar concealed inside the battery chamber of the mobile phone is not denied. Therefore, the contention that there was no concealment or misdeclaration is incorrect. Further, the Applicant opted for spot adjudication after waiving the Show Cause Notice. The allegation against him were, however, orally communicated to him. He did not raise the issue of seizure mahazar not being drawn or search not being conducted in the presence of Magistrate/Gazetted Officer before the original authority. Therefore, it is apparent the same is nothing but an afterthought.

6. As per Section 123 of Customs Act 1962, 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 bar as stipulated under Section 77 of the Act, *ibid*. The gold bar was concealed in Nokia Cell phone in place of battery and wrapped in a Burka to avoid detection. Manner of concealment makes the intention to smuggle manifest. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Keeping in view the facts of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government holds that the lower authorities have correctly held the goods to be liable to confiscation under Section 111 of the Act, *ibid*.

7. The contention of the Applicant is that he is an 'eligible passenger'. The Government observes that this contention was also raised before the Appellate authority who has dealt with the matter in para 04 of the impugned OIA. Nothing has been placed

on record to controvert the findings of the Commissioner (Appeals) on this aspect. Hence, there is no merit in the subject contention of the Applicant.


8. Other contention of the Applicant is that re-export of gold was not considered. Section 80 of the Customs Act, 1962, reads as follows:

"Temporary detention of baggage. - Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name"

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 { 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 the Applicant had made no declaration in respect of the subject goods, the question of allowing re-export does not arise.

9. In the facts and circumstances of the case, the penalty imposed is just and fair.

10. In view of the above, the revision application is rejected.

  
(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Thufiq Rafiq  
S/o Hussain Asaraf Ali  
Represented by Sh. K. Shaik Abdullah  
No. 27, Kannappa Swami Nagar, Main Street,  
Chennai-600066

Order No. 328 /22-Cus dated 27-10-2022

● Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001
2. The Pr. Commissioner of Customs, Airport, New Custom House, Meenambakkam, Chennai-600027
3. Sh. M. Abdul Nazeer, Advocate, No. 65, Beracah Road, Varadamma Garden, 3<sup>rd</sup> Street, Kilpauk, Chennai-600010
4. PA to AS(RA).
5. Guard File.
6. Spare Copy

ATTESTED



27.10.22

(लक्ष्मी राघवन)

(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi