

SPEED POST



F.No. 375/13/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... 28/9/21

Order No. 196/21-Cus dated 28-9-2021 of the Government of India passed by Sh. Sandeep Prakash, 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 No. CC(A)CUS/D-I/Airport/527/2018 dated 25.10.2018 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Sh. Mushahd Husan, Moradabad.

Respondent : The Commissioner of Customs, IGI Airport, New Delhi.

ORDER

A Revision Application, bearing No. 375/13/B/2019-RA dated 11.02.2019, has been filed by Sh. Mushahd Husan, Moradabad (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)CUS/D-I/Airport/527/2018 dated 25.10.2018 passed by the Commissioner of Customs (Appeals), New Delhi whereby the Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original No.264/AS/JC/2017 dated 08.11.2017 passed by the Joint Commissioner of Customs, IGI Airport, New Delhi.

2. Briefly stated, the Applicant herein arrived at IGI Airport, New Delhi, on 02.06.2015, from Riyadh and was intercepted by the Customs Officer near the exit gate after he had crossed the Green Channel. The Indian Customs Declaration Form was retrieved from the Applicant, wherein he had declared 'nil' value of the goods imported in the Column No. 9 and also did not declare any gold articles in the Column No. 10 thereof. Upon detailed examination of his checked-in-baggage, a battery operated toy bike was found wherein 08 yellow metal bars of gold each weighing 100 gms, were found concealed. The Jewellery Appraiser valued the 08 bars, collectively weighing 800 gms, at Rs. 19,80,440/- (Tariff Value) and Rs. 21,78,800/- (Market Value). The gold bars were seized, under Section 110 of the Customs Act, 1962. In his voluntary statement dated 03.06.2015, recorded under Section 108 of the Customs Act, 1962, the Applicant admitted recovery of subject gold bars, concealed in a battery operated toy bike, from one of his checked-in-bags and stated that he did not declare the gold at Red Channel to evade payment of customs duty. The original authority ordered absolute confiscation of 08 seized gold bars under Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. A penalty of Rs. 3,90,000/- was also imposed on the Applicant under Sections 112 and 114AA of the Customs Act, 1962. The appeal filed by the Applicant was rejected by the Commissioner (Appeals), as above.

3. The revision application has been filed, mainly, on the grounds that the gold was duly declared by the Applicant at the time of arrival, therefore, there was no question of mis-declaration or non-declaration; that the import of gold is not prohibited; that the Show Cause Notice is barred by limitation; that the personal penalty imposed is on a higher side; and that penalty under Section 114AA is applicable only to those cases where a person use false and incorrect material whereas in this case the Applicant had not used any false and incorrect material. Accordingly, it has been prayed that the gold may be returned to the Applicant or it may be allowed to be redeemed on payment of nominal redemption fine for home consumption, and the penalty may also be reduced.

4. Personal hearing, in virtual mode, was held on 27.09.2021. Sh. S.S. Arora, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that:

- (i) The SCN was not received within 06 months, which is in contravention of Section 110(2). Hence, the gold should be returned.
- (ii) The Applicant had not crossed the Customs barrier. Hence, the gold cannot be considered to be smuggled.
- (iii) The Applicant is the owner of the gold who had brought it for the marriage of his daughter. Hence, a lenient view may be taken.
- (iv) As per para 1.2 of the OIO, the Customs Declaration Slip was "retrieved" from the Applicant. Thus, it is apparent that no declaration was filed. Hence, penalty under Section 114AA is not applicable.

None appeared for the respondent department. No request for adjournment has also been received. Hence, the matter is taken up for final disposal based on records.

5. The revision application has been filed with a delay of 05 days. The delay is condoned.

6. The Government has carefully examined the matter. The sub-section (2) of Section 110 of the Customs Act, 1962 reads as under:

"Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified:

Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply."

Preliminary issue raised by the Applicant with reference to the Section 110 (2) is that the Show Cause Notice in the matter was not received by him within six months of the seizure of the goods and, therefore, the goods should be returned to him. The Government observes that this issue was also raised before the original authority, who found that *"the show cause notice was duly sent to the correct address of the noticee by Registered Post and thus, due compliance under Section 153 of the Customs Act, 1962 has been made in the instant case"*. While, it is true that Section 153, at the time of issue of the Show Cause Notice i.e. 24.11.2015, provided that any orders or decisions passed under the Customs Act, shall be served by tendering such order/decision or sending it by registered post. In the present case, the Joint Commissioner has stated that the notice was sent by registered post but no further details such as the date of the registered post; whether it was sent under acknowledgement due; if so, whether the acknowledgment was received back etc. are forthcoming. In absence of such details, it is not possible to take a view that the notice was, in fact, sent in accordance with Section 153 within the time period provided in Section 110 (2). On the other hand, the Applicant has clearly stated that the Show Cause Notice was not received by him. In these circumstances, it would be in the interests of justice that the matter is remanded to the original authority to verify from records whether the notice was indeed given as per the requirements of

Section 110 (2) read with Section 153, and, thereafter, decide the matter afresh on merits, in accordance with law.

7. In view of the above, the orders of the lower authorities are set aside and the revision application is allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

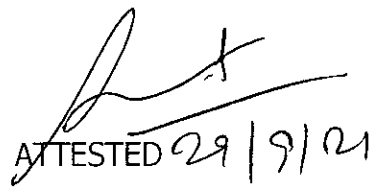
Additional Secretary to the Government of India

Sh. Mushahd Husan,
R/o Tehsil Budiya Wali Masjid,
Opp. Dr. Fareed, PS – Nagphani,
Moradabad, UP – 244001.

Order No. 196/21-Cus dated 28-9-2021

Copy to:

1. The Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi- 110037.
3. Sh. S.S. Arora, Advocate, B1/71, Safdarjung Enclave, New Delhi – 110037.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.



ATTESTED 29/9/21

[KANITA SINGH]

Supdt.