

REGISTERED
SPEED POST



F.No. 372/16/B/2017-RA & 372/17/B/2017-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..11.11.18.

Order No. 216-217/18-Cus dated 6-12-2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & 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 No.04/CUS(A)/GHY/17 dated 28.3.2017, passed by the Commissioner of Customs (Appeals), Guwahati
- Applicant : Mr. Rajinder Nirula, Delhi
Mr. Sanjay Chauhan, Delhi
- Respondent : Commissioner of Customs (Preventive), Shillong

ORDER

Two Revision Applications No.372/16/B/2017-RA & 372/17/B/2017-RA both dated 04.4.2017, are filed by Mr. Rajinder Nirula and Mr. Sanjay Chauhan, residents of Delhi (hereinafter referred to as the applicants) against the Order-in-Appeal No.04/CUS(A)/GHY/17 dated 28.3.2017, passed by the Commissioner of Customs (Appeals), Guwahati, whereby the applicants' appeal against the Order of the Additional Commissioner have been rejected.

2. The brief facts leading to the present proceeding are that the applicants were intercepted by the Custom Officers on 20.9.15 at Imphal Airport along with gold valued at Rs.4523285/- and the same were seized on the reasonable belief that the gold have been smuggled in India with the intention of evasion of Customs Duty. After following due procedure, the gold was absolutely confiscated and penalties were imposed on the applicants vide Additional Commissioner's OIO No.Com/CUS/Addl.Commr/37/2016 dated 29.7.16. Their appeals filed before the Commissioner (Appeals) against the OIO were also rejected vide above mentioned OIA.

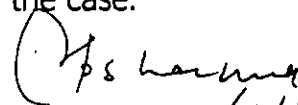
3. The revision applications are filed mainly on the grounds that gold confiscated in this case was actually owned by Mr. Anil Malik, a Jeweller from New Delhi and the same had been carried by the two applicants from Delhi to Imphal on behalf of Mr. Anil Malik for getting the Manipuri style jewellery made in Imphal and the question of smuggling of the gold from any foreign country does not arise in this case as Imphal is not an International Airport.

4. Personal hearing was availed by the respondent on 16.11.18 through Mr.R.K.Darendrajit Singh, Assistant Commissioner, Customs Division, Imphal, who pleaded that the OIA is absolutely just and proper. He also produced a copy of the Order dated 15.1.18 of the CJM, Manipur, as per which both the applicants are sentenced for a day's imprisonment and a penalty of Rs.5000/- is imposed on the basis of guilt admitted by the applicants. The applicants, however, availed the

hearing on 27.11.18 through Ms. Sangita Bhayana, Advocate, who emphasized that they did not smuggle any gold in this case as Imphal is not an International Airport and gold was in fact owned by Mr. Anil Malik, a Jeweller in Delhi, with whom the applicants were employed.

5. The Government has examined the matter and it is observed that the gold was seized from the applicants while they were returning from Imphal to Delhi by domestic Air India flight on 20.9.15 and thus departmental case is not that the gold was imported by the applicants in Imphal as part of baggage as defined in Section 2(3) of the Customs Act, 1962. The applicants have also heavily emphasized that Imphal is not an International Airport and, therefore, question of smuggling of the gold could not arise. Accordingly, it is evident from the facts of the case that it is a case of general seizure of gold on the premise that the gold was smuggled. But it is not a case of baggage at all. As per 1st Proviso to Section 129A(1) read with Section 129DD of the Customs Act, a revision application can be filed before the Central Government against the OIA only if it relates to any goods imported or exported as baggage or short landing of imported goods or payment of drawback. But there is no provision for filing the revision application where the OIA relates to general seizure of the smuggled goods as is in the present case. Therefore, the Government finds that it does not have jurisdiction to deal with the aforementioned OIA which does not involve any of the issues specified in 1st Proviso to Section 129A(1) which are mentioned above and the appeals should have been filed before the CESTAT in the matter.

6. In view of above discussions, the revision applications are rejected as non-maintainable due to lack of jurisdiction without going into the merit of the case.


(R.P.Sharma) 6.12.18

Additional Secretary to the Government of India

1. Mr. Rajinder Nirula, S/o Mr. Shadi Lal Nirula, 48-E Block, LP Flats, Pitampur, Delhi-110088

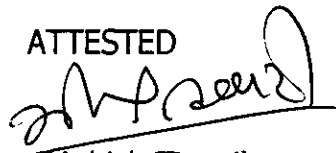
2. Mr. Sanjay Chauhan, S/o Late Mr. Hari Kishan, 132, Nanhey Park, B-Block, Matiala, Delhi-110059

Order No.2/6-217/18-Cus dated 6-12-2018

Copy to:

1. Commissioner of Customs (Preventive), 110, Mahatma Gandhi Road, NER, Shillong-793001
2. Commissioner of Customs (Appeals), 5th Floor, Customs House, Nilmani Phukan Path, Christian Basti, Guwahati-781005
3. Additional Commissioner of Customs (Preventive), 110, Mahatma Gandhi Road, NER, Shillong-793001, Meghalaya
4. Ms Sangita Bhayana, Advocate, Chamber No.707, LCB-III, High Court of Delhi, New Delhi-110003
5. PA to AS(RA)
6. Guard File.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner