

SPEED POST



F.No. 375/38/B/2018-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. 3/2/21

Order No. 27 /21-Cus dated 03-02-2021 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 No.CC(A)Cus/D-I/Air/78-81/2018 dated 13.03.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Syed Abbas Ali  
Mr. Sayed Zaheer Abbas  
Mr. MandsorwalaQusai  
Mr. Amjad Amir

Respondent : Commissioner of Customs (Airport & General), New Delhi

**ORDER**

A Revision Application No. 375/38/B/2018-RA dated 18.04.2018 has been filed by Mr. Syed Abbas Ali, Mr. Sayed Zaheer Abbas, Mr. Mandsorwala Qusai and Mr. Amjad Amir (hereinafter referred to as the applicants) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/78-81/2018 dated 13.03.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals), vide the above mentioned Order-in-Appeal, has rejected the appeal as time barred observing that the applicants failed to file the appeal within the stipulated period of 60 days per Section 128 of the Customs Act, 1962 and that the applicants did not make the mandatory pre-deposit of 7.5%, as per Section 129E of the Customs Act, 1962. No application for condonation of delay was filed before the Commissioner (Appeals).

2. The brief facts of the case are that the applicants arrived on 20.03.2014 at IGI Airport from Bangkok and were intercepted in departure lounge area. Three passengers, namely, Mr. Syed Abbas Ali, Mr. Sayed Zaheer Abbas and Mr. Mandsorwala Qusai had arrived from Bangkok and were going to Kathmandu. Fourth passenger, namely, Sh. Amjad Amir was going to Hyderabad from Delhi. After search of their person and of their baggage, 10 pieces of gold articles, (such as belt buckles, wrist watches, chains and kadas), were recovered from their possession. The gold articles, weighing 4494.40 grams, were appraised at Rs.1,24,00,052/- by the Jewellery

Appraiser at IGI airport. Applicants in their statement dated 20.03.2014 admitted the concealment and recovery of gold articles from their possession.

3. The revision application has been filed canvassing that the gold is not a prohibited item and hence may be released on payment of redemption fine and penalty. As regard the delayed filing of appeals before the Commissioner (Appeals), it is stated that the Order-in-Original was passed on 09.03.2016 and dispatched on 15.03.2016 and was received by the applicants between 21.03.2016 and 24.03.2016. Appeals were filed before the Commissioner (Appeals) on 20.05.2016 and hence there was no delay in filing the appeals. As regards pre-deposit, it is stated that they had already deposited the mandatory penalty on 27.07.2016 and copies of the challans were submitted before the Commissioner (Appeals).

4. Personal hearing was granted on 07.01.2020, 24.01.2020, 20.01.2021 and 02.02.2021. Sh. R.P. Bairwah, Superintendent, appeared on behalf of the department on 02.02.2021. He supported the order of the Commissioner (Appeals) and prayed that revision application filed by the applicants should be rejected. None appeared on behalf of the applicants on all the abovementioned dates and no request for further adjournment has been received. Hence, the case is being taken up for decision.

5. Government has examined the matter. It is observed that the Commissioner (Appeals) has rejected the appeals as time barred as the appeals were not filed within

the stipulated period of 60 days in terms of Section 128 of the Customs Act, 1962. Applicants have pleaded that the Order-in-Original were received by them between 21.03.2016 and 24.03.2016 but Government notices that no proof evidencing the same has been submitted by the applicants. Further, the applicants have themselves mentioned the date of communication of Order-in-Original as 09.03.2016 in CA-1 form submitted at the time of filing appeals before the Commissioner (Appeals). So, the plea of the applicants that they had received the said OIO between 21.03.2016 to 24.03.2016, in the absence of any evidence to justify the same, is to be held as factually incorrect. In the circumstances, the plea that the appeals were filed, within limitation, before the Commissioner (Appeals) is not acceptable.

6. The Commissioner (Appeals) has also rejected the appeal on the ground that the applicants did not make mandatory pre-deposit of 7.5% as per Section 129 (E) of the Customs Act, 1962. It is not disputed that being a mandatory condition the pre-deposit ought to have been made. Applicants have claimed that the requisite pre-deposit has been made and the Commissioner (Appeals) did not take the notice of that while passing the order. However, it is observed from the CA-1 form submitted that while it mentions at sl.6 thereof that pre-deposit had been made but the details of the relevant challans are neither mentioned nor copies appear to have been attached. Further, the applicants have not submitted the copies of challans evidencing that the pre-deposit had been made even at the time of filing the revision application. Moreover, the applicants were granted four hearings and on none of the above dates did they appear for hearing nor did they submit the proof evidencing that the pre-deposit had indeed

been made. Thus, the findings of Commissioner (Appeals) cannot be faulted. As such, there is no infirmity in the impugned Order-in-Appeal.

7. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. Mr. Muthusamy Samkannu, R/O -- H. No. 50/5, Kattu Mariyamman Kovil Street, Thuvrankurichi, Village and Post Office Trichy Rural – 621314

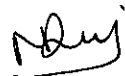
Order No. 27 /21-Cus dated 03-02-2021

Copy to:

1. Commissioner of Customs (Airport & General), IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi
3. Additional Commissioner of Customs, IGI Airport, New Custom House, New Delhi
4. PA to AS(RA)
5. Guard File.

6. *Space Copy*

ATTESTED



(Nirmala Devi)

Section Officer (Revision Application)