

SPEED POST



F. No. 375/69/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... 4/11/22

Order No. 03/22-Cus dated 04-01-2022 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 129DD of the Customs Act 1962 against the Order-in-Appeal No. CCA(A)Cus/D-I/Air/413/2019-20 dated 31.10.2019 passed by the Commissioner of Customs (Appeals), NCH, New Delhi

Applicant : Ms. Arzygul Baygeldiyeva, Ashkhabad, Turkmenistan.

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

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ORDER

A Revision Application No. 375/69/B/2019-RA dated 28.11.2019 has been filed by Ms. Arzygul Baygeldiyeva, Ashkhabad, Turkmenistan (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CCA(A)Cus/D-I/Air/413/2019-20 dated 31.10.2019 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original, bearing no. 290/Adj/18 dated 30.05.2018, passed by the Additional Commissioner of Customs, IGI Airport, New Delhi.

2. The brief facts of the case are that the Applicant arrived, on 04.05.2018, at IGI Airport, New Delhi from Istanbul and was intercepted near the exit gate after she had crossed the Customs Green Channel. On being asked by the Customs officers whether she had anything to declare, she replied in negative. Her baggage search resulted in the recovery of multiple gold rings intertwined, crudely given the shape of a gold chain and one gold bracelet, collectively weighing 916 grams and totally valued at Rs. 23,98,010/-. The Applicant, in her statement dated 04.05.2018, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of above-mentioned gold items from her hand baggage during her personal/ baggage scanning/ search proceedings and produced the Invoice No. 8731 dated 03.05.2018 issued by M/s Aksiyon Gold, claiming ownership of the offending goods. She further stated that the gold belonged to her and it was her ninth visit to India; that she came to India for business purpose and during her visits she came to know that there is good profit in gold business i.e., carrying gold from Turkmenistan and selling the same in India; that therefore in the greed of earning money she brought the confiscated goods; that during her last two (02) visits, she brought 1500 gms gold and she did not declare the gold at Red Channel of customs to evade payment of Customs duty. The original authority, vide the aforesaid Order dated 30.05.2018, ordered absolute confiscation of the seized gold items, under Section 111(d), 111(i), 111(j), 111(l), 111(m) & 111(o) of the Customs Act, 1962. A penalty of Rs. 8,13,400/- was also imposed on the Applicant, under Sections 112 & 114AA of the

Act, *ibid*. The appeal filed by the Applicant herein has been rejected, as barred by limitation, *vide* the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that there was no concealment of the confiscated goods and the Applicant was wearing the same around her neck and in her hand; that Applicant is a foreign national and the owner of the confiscated gold items; that gold ornaments are not prohibited items for import into India; and that her statement was recorded under pressure and false promise. Accordingly, re-export or redemption on payment of redemption fine in terms of Section 125 of the Act, *ibid* may be allowed. It is also prayed that only token penalty may be imposed.

4. Personal hearing, in virtual mode, was held on 04.01.2022. Ms. Kanika Goswami, Advocate appeared for the Applicant and reiterated the contents of revision application as well as written submissions filed by email on 04.01.2022. Upon being pointed out that the Commissioner (Appeals) had rejected their appeal on the grounds of limitation, Ms. Goswami stated that she had nothing further to add. Sh. Charan Singh, Superintendent appeared on behalf of the respondent department and supported the order of Commissioner (Appeals).

5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the revision application, the Government observes that the appeal before the Commissioner (Appeals) was filed on 22.10.2018, though the Order appealed against was admittedly communicated to the Applicant herein on 30.05.2018. As per sub-section (1) of Section 128 of the Customs Act, 1962, an appeal before the Commissioner (Appeals) can be made within 60 days from the date of communication to the appellant of the order against which the appeal is being made. However, proviso to said sub-section (1) provides discretion to the Commissioner (Appeals) to allow an appeal to be presented within a further period of 30 days, if the Commissioner (Appeals) is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the normal period of 60 days. In

this case, the OIO was communicated to the Applicant herein on 30.05.2018, and appeal was filed on 22.10.2018. Thus, the appeal was filed even beyond the condonable period of 30 days. It is settled by a catena of judgments of the Hon'ble Supreme Court that the Commissioner (Appeals) is not empowered to condone the delay beyond the statutorily provided condonable period of 30 days [Ref. Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 0163 (SC)} & Amchong Tea Estate vs. UOI {2010 (257) ELT 3 (SC)}]. Therefore, the Government does not find any infirmity in the order of Commissioner (Appeals).

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


Ms. Arzygul Baygeldiyeva,
C/o Ms. Kanika Goswami, Advocate
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Order No. 03/22-Cus dated 04-01-2022

Copy to:

1. The Commissioner of Customs (Appeals), New Customs House, New Delhi-110037
2. The Commissioner of Customs, IGI Airport, New Delhi;
3. Ms. Kanika Goswami, Advocate, M/s Sareen & Sareen Advocates, WZ-258A, UGF, Street No. 4, Sri Nagar, Rani Bagh, New Delhi – 110034, Mobile No. 8860009191
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED


(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