

SPEED POST



F.No. 375/19/B/20-RA  
375/18/B/20-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... 29/3/22

Order No. 107-108/22-Cus dated 29-03-2022 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 No. CC(A)/CUS/D-I/Air/391/19-20 dated 18.10.2019 and CC(A)/CUS/D-I/Air/389/19-20 dated 22.10.2019 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi.

Applicant : (1) Sh. Mufazzal Yahya Bhai, Surat.  
(2) Smt. Tasneem Mulla Shabbir Bhai, Surat.

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

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**ORDER**

Two Revision Applications, bearing Nos. 375/19/B/20-RA and 375/18/B/20-RA, both dated 30.01.2020 have been filed by Sh. Mufazzal Yahya Bhai and Smt. Tasneem Mulla Shabbir Bhai, Surat (hereinafter referred to as the Applicants) against the Orders-in-Appeal No. CC(A)/CUS/D-I/Airport/391/19-20 dated 18.10.2019 and CC(A)/CUS/D-I/Airport/389/19-20 dated 22.10.2019, respectively, passed by the Commissioner of Customs (Appeals), New Delhi, vide which the appeals filed by the Applicants herein against the Order-in-Original No.17/Adjn/2018 dated 31.01.2018, passed by the Additional Commissioner of Customs, IGI Airport, New Delhi, have been rejected on the ground that the Applicants herein did not make the mandatory pre-deposit of 7.5%, as per Section 129E of the Customs Act, 1962.

2. Brief facts of the case are that the Applicants, who are husband and wife, along with their infant daughter, arrived from Dubai, on 12.12.2016, at IGI Airport, New Delhi. They denied having anything, on being asked by the customs officers, to declare any dutiable item. Thereafter, 08 gold bars, collectively weighing 8000 grams and valued at Rs. 2,14,30,720/-, were recovered, found concealed in the diaper of their infant daughter. The Applicants, in their statements dated 12.12.2016, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of gold items from the diaper of their daughter. They also stated that the same had been concealed intentionally by them to escape detection by the customs. The Additional Commissioner of Customs, IGI Airport, New Delhi, confiscated absolutely the offending gold and a penalty of Rs. 43 Lakhs was also imposed on each of the Applicants. Aggrieved, the Applicants filed appeals before

the Commissioner (Appeals), who, vide the impugned Os-I-A, has rejected the same as non-maintainable as no pre-deposit was made as per Section 129E of the Customs Act, 1962.

3. The revision applications have been filed, mainly, on the grounds that the appeals were wrongly rejected solely on the technical ground of not making the mandatory pre deposit of 7.5% of the penalty amount as no deficiency memo was issued or personal hearing granted to them before rejecting the appeals on the threshold. Several contentions have been raised on the merits as well.

4. Personal hearing was granted on 09.02.2022, 28.02.2022 and 28.03.2022. None appeared from either of the parties nor any request for adjournment has been received. Since sufficient opportunities have been granted, the case is taken up for final disposal on the basis of records.

5. The Government has examined the matter carefully. The Commissioner (Appeals) has rejected the appeals on the ground that the Applicants did not make mandatory pre-deposit of 7.5% of the penalty amount, as required in terms of Section 129E of the Customs Act, 1962. The fact that the requirement of pre-deposit is mandatory is not disputed. The grievance appears to be that sufficient opportunity was not granted to rectify the defect. It is, however, observed that the Applicants filed their respective appeals on 30.05.2018 and the appeals came to be rejected on 19.10.2019 and 22.10.2019, respectively. Thus, the Applicants herein had sufficient opportunity to make the pre-deposit before their appeals came to be rejected. It is further observed that the orders of Commissioner (Appeals) are more than 2 years and 5 months old but the Applicants have even at this stage, not shown compliance with the provisions of Section 129E. Thus, the Applicants have had ample

opportunity to show compliance but have failed to do so. As such, the Orders of Commissioner (Appeals) cannot be faulted.

6. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Mufazzal Yahya Bhai,  
S/o Sh. Yahya Bhai Mohammed,  
R/o H. No. 4/3267,  
Kadir Manzil, Near Zaveri House, H K Street,  
Begumpura, Surat, Gujarat.

2. Tasneem Mulla Shabbir Bhai Moaiyadi,  
W/o Shri Muffazal Yahya Bhai,  
R/o 201, Burhani Palace, Begumpura,  
Surat.

Order No. 107-108/22-Cus dated 29-03-2022

Copy to:

1. The Commissioner of Customs, IGI Airport, Terminal - 3, New Delhi - 110037.
2. The Commissioner of Customs (Appeals), New Delhi, New Custom House, Near IGI Airport, New Delhi - 110037.
3. Sh. Navneet Panwar, Advocate, Chamber No. 202, Patiala House Court, New Delhi - 110001.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED

(Ashish Tiwari)  
Assistant Commissioner (RA)