

SPEED POST



F. No. 375/86/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. 13/11/22

Order No. 15/22-Cus dated 12-01-2022 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 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)/CUS/D-I/Airport/324/2019-20 dated 20.09.2019, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Sh. Rahber Bendichhal Aboobacker, Kasaragod, Kerala.

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

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ORDER

A Revision Application No. 375/86/2019-RA dated 24.12.2019 has been filed by Sh. Rahber Bendichhal Aboobacker, Kasaragod, Kerala (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)/CUS/D-I/Airport/324/2019-20 dated 20.09.2019, passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals), vide the impugned Order-in-Appeal, has rejected the appeal filed by the Applicant herein against the Order-in-Original No. 22-AdJ-/2016 dated 04.05.2016, passed by the Additional Commissioner of Customs, IGI Airport, New Delhi.

2. The brief facts of the case are that the Applicant arrived, on 21.10.2014, at T-3, IGI Airport, New Delhi by flight no. EK-514 from Dubai and was intercepted at exit gate after he had crossed the customs green channel and diverted for detailed examination of his baggage. He was asked whether he was carrying any dutiable goods to which he replied in the negative. On search of his person and baggage, four packets, each wrapped with adhesive tapes, containing 48 gold bars, collectively weighing 5598.72 gms and valued at Rs. 1,39,30,763/-, were recovered. The Applicant, in his statement dated 22.10.2014, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of above said gold bars from his possession. He also agreed with the contents of the Panchnama dated 21/22.10.2014, manner of proceedings and jewellery appraiser's report. He stated that

the recovered gold bars were not his own; that he was told that some person will contact him at Delhi Airport and was offered a handsome amount for this work; and that he had not declared the gold at the Customs Red Channel, deliberately. The gold bars were confiscated absolutely by the original authority, under Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962, vide the OIO dated 04.05.2016 and a penalty of Rs. 28 Lakhs was also imposed under Section 112 and 114AA of the Act *ibid*. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who vide the impugned OIA, has rejected the appeal.

3. The instant revision application has been filed, mainly, on the grounds that the Applicant was denied the just and fair opportunity for declaring the gold before the Customs authorities on his arrival; that there are inconsistencies in the Panchnama dated 21/22.10.2014; and that the lower authorities ought to have permitted either re-export or redemption of the said gold bars in the given circumstances.

4. Personal hearing in, virtual mode, was held on 12.01.2022. Sh. Mohd. Zahir, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that:

- (i) There are apparent contradictions in the Panchnama in as much as on page-1 it is stated that Customs Declaration Form was retrieved from the officer with whom it had been deposited

whereas on page-2 it is stated that Form was found on the pax. Thus, it is a case where the Applicant has been dragged into a contravention whereas his intention was to declare.

- (ii) The Commissioner (Appeals), who has passed the impugned OIA, has not heard them and has passed the order on the basis of hearing before his predecessor. Hence, the OIA is passed in contravention of principles of natural justice.

None appeared for the Respondent department nor any request for adjournment has been received. Hence, the matter is being taken up for disposal on the basis of facts available on record.

5. The Government has examined the matter carefully. The preliminary issue raised is regarding contravention of principles of natural justice by the Commissioner (Appeals). It is alleged that the Commissioner (Appeals) has passed the impugned OIA on the basis of PH held before his predecessor and without himself hearing the Applicant. It is observed from the impugned OIA that the Applicant attended personal hearing before the Commissioner (Appeals) on 08.03.2018. After a long gap, a notice for personal hearing was sent to the Applicant for appearance on 02.09.2019. It appears that the Applicant's counsel, vide letter dated 03.09.2019, requested that the PH may be re-scheduled. However, no further opportunity was granted to the Applicant and the matter was decided on the basis of the personal hearing earlier held by the predecessor in office of the

Commissioner (Appeals), who has passed the impugned OIA. In the circumstances, it is evident that impugned OIA has been passed in violation of principles of natural justice.

6. In view of the above, the revision application is allowed by way of remand to Commissioner (Appeals), with directions to decide the matter afresh, in accordance with principles of natural justice.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Rahber Bendichhal Aboobacker,
R/o Rahber Villa, Cherror Kunnu,
Cherror (PO), Kasaragod District,
Kerala – 671123.

Order No. 15/2022-Cus dated 12-01-2022

Copy to:

1. The Commissioner of Customs, IGI Aiport, Terminal -3, New Delhi – 110037.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037.
3. Sh. Mohd. Zahir, Advocate, 3/57-A, Nedungadi Gardens West, Nadakkavu Calicut, Kerala – 673011.
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED



आशीष तिवारी / ASHISH TIWARI

सहायक आयुक्त / Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi