

REGISTERED
SPEED POST



F.No. 372/10/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. 27/8/21

Order No. 163/21-Cus dated 27-8-2021 of the Government of India passed by Shri 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. KOL/CUS(AIRPORT)/AA/2049/2018 dated 03.12.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Pradeep Suresh Rupani, Ulhasnagar, Thane.

Respondent : The Commissioner of Customs (Airport & Admin), Kolkata.

ORDER

A Revision Application No. 372/10/B/2019-R.A. dated 05.03.2019 has been filed by Sh. Pradeep Suresh Rupani, Ulhasnagar, Thane (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(AIRPORT)/AA/2049/2018 dated 03.12.2018, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has upheld the Order-in-Original No. 143/2018 ADC dated 31.05.2018, passed by the Additional Commissioner of Customs, AIU, NSCBI Airport, Kolkata, vide which gold, valued at Rs. 96,49,662/-, which was seized from the Applicant, has been absolutely confiscated and a penalty of Rs. 10,00,000/- has been imposed upon him, under Section 112 (a) & (b) of the Customs Act, 1962.

2. Briefly stated, the Applicant had arrived at NSCBI Airport, Kolkata on 28.05.2017, from Singapore. He was intercepted by the officers of DRI, Kolkata while passing through green channel towards the exit gate and upon search, two whole pieces of yellow metal biscuits, wrapped with black coloured adhesive tapes, were found to be concealed inside the shoe of right leg and another one whole piece and one cut piece of yellow metal biscuits, wrapped with black coloured adhesive tapes, were found to be concealed inside the shoe of left leg worn by the Applicant. The recovered yellow metal pieces were found to be made of 24 carat gold, collectively weighing 3293.400 gms, totally valued at Rs. 96,49,662/-. The original authority ordered for absolute confiscation and imposition of penalty on Applicant, as above. The appeal filed by the Applicant has been rejected by the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that the Show Cause Notice dated 20.10.2017 said to have been issued, was not received by him; that no personal hearing was granted to the Applicant; and that these aspects were presented before Commissioner (Appeals) but were not taken into account while deciding the appeal. Several contentions on merits of the case have also been raised.

5. Personal hearing, in virtual mode, was held on 27.08.2021. Sh. Ajay Singh, Advocate appeared for the Applicant and stated that at this stage he does not dispute the seizure and its attendant circumstances. However, he submits that the original authority has passed his order in gross violation of principles of natural justice and the requirements of the Customs Act i.e. the show cause notice was not served on the Applicant and only one opportunity of PH was granted. The Commissioner (Appeals) has failed to address these issues. Therefore, the matter should be remanded to the original authority for de-novo consideration after following the principles of natural justice. Sh. Jitendra Kumar, Superintendent supported the orders of the lower authorities.

6. The Government has carefully examined the matter. As per Section 124 of the Customs Act, 1962, no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person is given a notice in writing informing him of the grounds on which it is proposed to confiscate the

goods or to impose a penalty; and such person is given a opportunity of making representation in writing as well as a reasonable opportunity of being heard in the matter. Further, as per Section 122A ibid, the adjudicating authority shall give opportunity of being heard to a party in a proceeding and may grant time, from time to time, to the parties and adjourn the hearing provided that no such adjournment can be granted more than three times to a party during the proceeding. The Government observes that, in the present case, it is the contention of the Applicant that the Show Cause Notice dated 20.10.2017 was not received by him. It is also evident from the Order of the original authority that only one opportunity for personal hearing was granted i.e. on 18.04.2018. In these circumstances, it is clear that subject Order-in-Original has been passed without following the principles of natural justice and the aforesaid provisions of the Customs Act. Therefore, the Government holds that it will be in the interest of justice to remand the matter to the original authority for de-novo consideration after following the principles of natural justice and in accordance with the provisions of the Customs Act.

7. In view of the above, the Orders of the lower authorities are set aside and the revision application is allowed by way of remand to the original authority, with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India


Sh. Pradeep Suresh Rupani,
Amit Apartment, Flat No. 601,
Near Sadhu Vaswani Statue,
Goal Maidan, Ulhasnagar-1, Thane – 421 001.

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Copy to:

1. The Commissioner of Customs (Airport & Admin), NSCBI Airport, Kolkata – 700052.
2. The Commissioner of Customs (Appeals), 3rd Floor, Customs House, 15/1, Strand Road, Kolkata – 700 001.
3. Sh. Ajay Singh, Advocate, 4A, Rahimtoola House, 2nd Floor, 7 Homji Street, Off. P.M. Road, Fort, Mumbai – 400 001.
4. PA to AS(RA)
5. ~~Guard File.~~
6. Spare Copy.

ATTESTED


27.08.2021

(लक्ष्मी राघवन)
(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