

SPEED POST



F. No. 373/19/B/2022-RA
F. No. 373/20/B/2022-RA
F. No. 373/21/B/2022-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..04/09/24.

Order No. 181-183/24-Cus dated 04-09-2024 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Applications, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal Nos. TVM-EXCUS-000-APP-346-2022 dated 31.10.2022, TVM-EXCUS-000-APP-356-2022 dated 18.11.2022 and TVM-EXCUS-000-APP-357-2022 dated 18.11.2022 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi.

Applicants :1. Smt. Nusrath Nasima, Tirunelveli
2. Smt. Noorjahan Aliyar, Tirunelveli
3. Sh. Syed Ali Abdul Kani, Tirunelveli

Respondent : The Commissioner of Customs (P), Kochi

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ORDER

Revision Applications, bearing Nos. 373/19/B/2022-RA, 373/20/B/2022-RA and 373/19/B/2022-RA all dated 05.04.2023 have been filed by Smt. Nusrath Nasima, Tirunelveli, Smt. Noorjahan Aliyar, Tirunelveli and Sh. Syed Ali Abdul Kani, Tirunelveli (hereinafter referred to as Applicant-1, Applicant-2 and Applicant-3, respectively), against the Order-in-Appeal Nos. TVM-EXCUS-000-APP-346-2022 dated 31.10.2022, TVM-EXCUS-000-APP-356-2022 dated 18.11.2022 and TVM-EXCUS-000-APP-357-2022 dated 18.11.2022 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi, vide which the Commissioner (Appeals) has upheld the Order-in-Original O.S Nos. 146/2020, 145/2020 and 147/2020 all dated 04.12.2020, passed by the Deputy Commissioner of Customs, Air Customs, International Airport, Thiruvananthapuram. Vide the aforementioned Order-in-Originals, two crude gold bangles of 24 carat purity, totally weighing 229.150 grams and collectively valued at Rs. 9,96,344/- recovered from the Applicant-1, two crude gold bangles of 24 carat purity, totally weighing 229.150 grams and collectively valued at Rs. 9,96,344/- recovered from the Applicant-2 and one crude gold chain and one crude gold bangle of 24 carat purity, totally weighing 216.64 grams and collectively valued at Rs. 9,41,950/- recovered from Applicant-3 had been absolutely confiscated under Section 111(d), 111(i), 111(j), 111(l), 111(m) & 111(o) of the Customs Act, 1962. Besides, penalties of Rs. 90,000/- each was also imposed on the Applicants, under Section 112 of the Act, *ibid*.

2. Brief facts of the case are that the officers of Air Intelligence Unit (AIU), Trivandrum International Airport intercepted the Applicants, Indian Passport holders, upon their arrival, on 04.12.2020 at the Customs Exit Gate. They were asked whether they were carrying gold, to which they replied in the negative. Upon the search of their person, the aforementioned gold items were recovered from their possession. The gold items were concealed by them with intention to evade customs duty by not declaring before the Customs. They had no foreign/Indian currency to pay Customs duty for the same and they were found to be ineligible passengers for importing gold under Notification No. 50/2017-Customs dated 30.06.2017. The matters were adjudicated by the original authority, vide

the aforesaid Orders-in-Original dated 04.12.2020. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which were rejected.

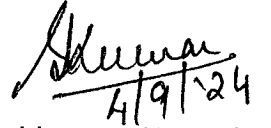
3. The revision applications have been filed mainly on the grounds that the applicants never crossed the Customs barrier when gold was recovered from their possession; that there was no attempt to smuggle the gold; that confiscation without an option for redemption is wrong in the absence of any prohibition for its importation; that import of gold bangles under baggage is not prohibited; that imposition of penalty is not sustainable and liable to be set aside.

4. Personal hearing in the matter was held on 12.08.2024. Sh. Jayaprakash, Advocate appeared on behalf of the applicants and was unable to connect to the link due to technical difficulties. In view of the technical difficulties faced, the advocate sent written submissions for all three RAs by email dated 13.08.2024 which have been taken on record. No one appeared for the Respondent. As such, it is presumed that the Respondent has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed that the impugned OIA was received by the Applicant-1 on 05.11.2022, Applicant-2 on 24.11.2022 and Applicant-3 on 24.11.2022 whereas the subject revision applications have been filed on 05.04.2023. As per sub-section (2) of Section 129DD, a revision application shall be made within a period of three months from the date of communication to the applicant of the order against which the application is being made. Further, in terms of proviso to said sub-section (2), the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months. In the subject cases, the revision applications have not been filed within the normal limitation period of 03 months. There is a delay of about 60 days in first RA and 40 days in the other two RAs. The Government observes that, in all the cases, identically worded applications for condonation of delay have been filed and the delay has been sought to be explained in following terms:

" Immediately on receipt of the order I was unable to engage a lawyer of repute to file a Revision Application against the Order-in-Appeal due to illness in the family."

Thus, the cause of delay is stated to be illness in the family of the respective Applicants. However, no medical certificates have been placed on record. Hence, the COD applications are unsubstantiated. Further, the Government finds it peculiar and unexplained that the families of all three Applicants fell ill at about the same time that too apparently for about the same duration. It would, thus, appear that requests for condonation of delay have been made in a mechanical and perfunctory manner, without consideration for the factual position. In the conspectus of these facts and circumstances, the Government is constrained to hold that the applicants have been unable to show "sufficient cause" as required under Section 129DD of the Customs Act, 1962. The three revision applications are thus rejected on grounds of limitation without traversing the merits of the cases.


4/9/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

1. Smt. Nusrath Nasima
D/o Sh. Sehu Lebbai Ahamed Mohideen
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Melepalaya Post, Thirunelveli City-627005
2. Smt. Noorjahan Aliyar
W/o Sh. Abdul Kana
74/204, Vellai Kaliba Shahib Street
Melapalayam Post, Tirunelveli City-627005
3. Sh. Syed Ali Abdul Kani
6/10, Rowthar East Puthu Street
Melapalayam, Tirunelveli City-627005

Order No. 181-183 /24-Cus dated 04-01-2024

Copy to:

1. The Commissioner of Customs (Preventive), Cochin, 5th Floor, Cochin Centre, Broadway, Cochin-682031.
2. The Commissioner of Customs (Appeals), 4th Floor, C.R Building, I.S Press Road, Cochin-682018.
3. Sh. G. Jayaprakash, Advocate, Prakasham, Apra-8, Pully Lane, Pettah P.O, Thiruvananthapuram-695024.
4. PPS to AS(RA).

5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



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