

**SPEED POST**



F.No. 375/123/B/2018-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..15/09/21..

Order No. 185/21-Cus dated 15/09/2021 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/236-237/2018 dated 24.08.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037

Applicants: Sh. Paramjeet Singh, Amritsar & Shri Sukhpreet Singh, Hongkong.

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

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**ORDER**

A Revision Application No. 375/123/B/2018-RA dated 29.11.2018 has been filed by Sh. Paramjeet Singh, Amritsar and Sh. Sukhpreet Singh, Hongkong (hereinafter referred to as the Applicant 1 & Applicant 2, respectively) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/236-237/2018 dated 24.08.2018 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi, bearing no. 31-Adj/2016 dated 16.05.2016, wherein 7 Gold Bars, collectively weighing 7000 grams (2 gold bars of 2000 grams recovered from Applicant 1 and 5 gold bars of 5000 grams recovered from Applicant 2 valued at Rs. 49,92,740/- and Rs. 1,24,81,850/-, respectively) have been absolutely confiscated and free allowance has been denied to the Applicants. Besides, penalty of Rs.10,00,000/- was also imposed on the Applicant 1 and Rs. 25,00,000/- on Applicant 2 by the original authority, under Section 112 & 114AA of the Customs Act, 1962, which has been maintained in appeal.

2. The brief facts of the case are that the Applicant 1 arrived, on 27.10.2015, at IGI Airport from Hongkong and was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person, in the presence of panchas and Custom officers, two yellow metal bars wrapped with green adhesive tape were recovered from the two thigh guards (one on each thigh) worn by the Applicant 1. During enquiry, the Applicant 1 submitted that he was accompanied by the Applicant 2. Thereafter, the Applicant 2 was intercepted. During the personal search of Applicant 2, five yellow metal bars wrapped with green adhesive tape were recovered from the two thigh guards worn by the Applicant 2. On enquiry both the Applicants disclosed that the said yellow metal bars were made of gold. The value of seized 2 gold bars was appraised at Rs.49,92,740/- (recovered from Applicant 1) and that of 5 gold bars was appraised at Rs. 1,24,81,850/- (recovered from Applicant 2) by the Jewellery Appraiser at IGI airport. The seven gold bars, collectively weighing 7000 grams, were seized under Section 110 of the Customs Act, 1962, vide panchanama dated 27.10.2015. The Applicant 1 in his statement

dated 27.10.2015, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of 2 gold bars from his possession and 5 gold bars from the possession of Applicant 2 and agreed with the contents of the panchanama dated 27.10.2015. He further admitted that he persuaded Applicant 2 to carry gold to India in lieu of to and fro tickets to be provided by him; that he had purchased seven gold bars of One Kg each from Hong Kong and handed over five gold bars to Applicant 2 to carry the same to India without declaring the same at Red Channel or to any Customs officer to evade Customs duty ; that he was fully aware that the import of gold was liable to Customs duty; and that the smuggling of the same was a punishable offence. The Applicant 2, in his statement dated 27.10.2015, admitted that he had agreed to carry the gold given by the Applicant 1 in consideration of to and fro air tickets.

3. A common revision application has been filed on behalf of both the Applicants canvassing that the gold imported is bonafide; that the import of the gold is not prohibited and, therefore, may be released on payment of redemption fine and appropriate duty or can be re-exported. Further, the penalty imposed may be set aside or reduced.

4. Personal hearing was fixed on 30.07.2021, 10.08.2021, 25.08.2021 and 10.09.2021. In the hearing held, in virtual mode, on 25.08.2021, Sh. C. S. Prasad, Advocate, appeared on behalf of the Applicants. Upon being asked to explain the maintainability of one RA by two separate individuals with different penalty etc., Sh. Prasad requested for short adjournment to make submissions in this regard. PH was, accordingly, adjourned to 10.09.2021. Personal hearing, in virtual mode, was held on 10.09.2021. Sh. C. S. Prasad, Advocate appeared and submitted that a Note of Submissions, including in respect of maintainability, shall be submitted by him separately. Upon being pointed out that this was the fourth hearing and the matter cannot be prolonged any further, Sh. Prasad undertook to file submissions by 2 PM on the same day and submitted that the case may be decided without any further PH. Note of submissions along with case laws have been submitted vide email dated 10.09.2021.

5.1 The Government has carefully examined the matter.

5.2 As per RA, the impugned OIA is stated to have been communicated to the Applicants on 24.08.2018. The RA is filed on 29.11.2018, i.e., beyond the limitation period of 03 months provided under Section 129DD(2). Upon being pointed out by the Office, a COD application has been filed on 04.09.2019 claiming that the OIA was received by the Applicants only on 08.09.2018 and, hence, the RA has been filed within limitation. However, no explanation is forthcoming regarding the date of communication being mentioned as 24.08.2018 in the RA. No evidence of actual receipt, on 08.09.2018, has also been produced. Hence, the claim that impugned OIA was received only on 08.09.2018 appears to be an afterthought. As such, the instant RA is liable to be rejected as time barred.

5.3.1 Another issue that arises for consideration is whether one common RA filed by two separate individuals who have been visited with confiscation of different quantities of gold and penalties etc. is maintainable. It is the contention of the Applicants that since the case arose out of same panchnama proceedings and a common OIO and common OIA have been issued, a common RA is maintainable. The Government observes that gold weighing 2 Kg was recovered from the Applicant 1 whereas gold weighing 5 Kg was recovered from the Applicant 2. Applicant 1 is stated to have purchased the 7 Kg of gold and Applicant 2 is stated to have been carried a part of it (5 Kg out of 7 Kg) at the instance of Applicant 1. Though, the original authority has decided the case by a common order, two separate appeals were filed on behalf of the Applicants herein. Thus, the facts, roles ascribed to and penalties imposed on the Applicants are different.

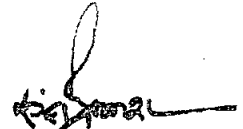
5.3.2 The Government observes that as per sub-section (1) of Section 129DD "(1) *The Central Government may, on the application of any person aggrieved by any order passed under section 128A, where the order passed under section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 129A, annul or modify such order: .....*" It is to be noted that the statute used the words "any person". The usage of prefix "any" before "person" makes it

clear that the words "person" cannot be read in plural in the context of Section 129DD. In other words, section 129DD does not provide for filing of one RA by more than one aggrieved persons.

5.3.3 The Applicants have relied upon CESTAT's larger bench judgment in the case of Ekantika Copiers (P) Ltd. {1991 (56) ELT 350 Tri Del} in support of their case. However, the Government observes that this decision is in respect of appeals before the Tribunal under section 35B of the Central Excise Act, 1944. The judgment of the Hon'ble Andhra High Court, reported as (1975) ILLJ 470 AP, which has also been relied upon, is with reference to maintainability of a single writ petition questioning one common order of Industrial Tribunal in eight miscellaneous petitions. Hence, the ratio of these decisions is not applicable in the facts of this case.

5.3.4 In view of the above, the Government holds that one common RA by two separate aggrieved persons is not maintainable.

6. The revision application is rejected for the reasons stated hereinabove.



(Sandeep Prakash)

Additional Secretary to the Government of India

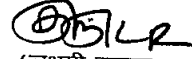
1. Sh.Paramjeet Singh,  
S/o Sh. Khazan Singh,  
R/o VPO Dhotian Tarn Taran  
Amritsar, Punjab
2. Sh. Sukhpreet Singh  
S/o Sh. Sarabjit Singh  
R/o No. 607,6/F, Chau Yat House  
Yat Thung Estate, Tung Chung  
Hongkong

Order No. 185/21-Cus dated 15/09/2021

Copy to:

1. The Commissioner of Customs, IGI Airport, Terminal-3, New Delhi – 110037.
2. The Commissioner of Customs (Appeals), New Customs House, New Delhi-110037.
3. Sh. C. S. Prasad, Adv., B-3, sector-6, Noida-201301
4. PA.to AS(RA)
5. Guard file
6. spare copy.

ATTESTED



(लक्ष्मी राघवण)  
(LAKSHMI RAGHAVAN)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Dept. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi