

SPEED POST



F.No. 380/17/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. 08/10/21.....

Order No. 208/21-Cus dated 08/10/21 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/163/2018 dated 31.05.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037.

Applicant : Commissioner of Customs, IGI Airport, New Delhi.

Respondent : Sh. Arun Kumar Mishra, New Delhi.

ORDER

A Revision Application No. 380/17/B/2018-RA dated 07.09.2018 has been filed by the Commissioner of Customs, IGI Airport, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/163/2018 dated 31.05.2018, passed by the Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals) has modified the Order-in-Original No. 171/Adj/2016 dated 15.12.2016 passed by the Additional Commissioner of Customs, IGI Airport, New Delhi, wherein 03 gold bars which were recovered from Sh. Arun Kumar Mishra, New Delhi (hereinafter referred to as the Respondent), totally weighing 2100 grams and valued at Rs. 47,83,779/-, were confiscated but allowed to be redeemed- 1100 grams were ordered to be released on payment of redemption fine of Rs 11,00,000/-, along with concessional rate of Customs duty @ 10.3% and 1000 grams of gold were released on payment of redemption fine of Rs. 10,00,000/- along with the applicable Customs duty @ 36.05%. Besides, penalty of Rs.15,00,000/- was also imposed by the original authority on the Respondent, under Section 112 & 114AA of the Customs Act, 1962. Commissioner (Appeals), vide the above mentioned OIA, has upheld the release of 1100 grams of gold on payment of redemption fine but reduced the quantum of redemption fine from Rs. 11,00,000/- to Rs. 4,80,000/-. Further, out of 1000 grams of remaining gold, 900 grams of gold has been ordered to be released on payment of Customs duty @ 10.3% instead of @ 36.05% and quantum of redemption fine has been reduced from Rs. 10,00,000/- to Rs. 4,60,000/-. Balance 100 grams of gold was ordered to be released on payment of redemption fine of Rs. 60,000/- along with applicable Customs duty @ 36.05%. Besides, the Commissioner (Appeals) has

also reduced the penalty imposed on the Respondent from Rs. 15,00,000 to Rs. 5,00,000/-.

2. The brief facts of the case are that the Respondent arrived, on 14.08.2015, at the IGI Airport, New Delhi, from London and was intercepted near the exit gate after he had crossed the Customs Green Channel. On being asked by the Customs officers whether he was carrying any gold with him, he replied in negative. Further, he had mentioned NIL and 'No' in the Column No. 9 & 10 of the Customs Declaration Form. After search of his person and of his baggage, 3 gold bars, totally weighing 2100 grams, were recovered from his possession, value whereof was appraised at Rs. 47,83,779/- by the Jewellery Appraiser at IGI airport. The 03 pieces of gold bars, collectively weighing 2100 grams, recovered from the Respondent, were seized under Section 110 of the Customs Act, 1962, under panchanama dated 14.08.2015. The Respondent, in his statement dated 14.08.2015, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of 03 gold bars. He further stated that he had purchased the said gold bars in London; and that he had two purchase invoices but the purchase invoice of 1 kg of gold was not available with him.

3. The revision application has been filed canvassing that the intention of the Respondent was to smuggle the gold into India and to evade Customs duty; that gold imported is not bonafide; that the Respondent had submitted invoices in the name of his wife (1100 grams) and in his own name (1000 grams); that the release of 900 grams of gold on payment of concessional rate of duty @ 10.3 was not correct as the

ownership of the gold was in name of the Respondent and the ownership of the gold cannot be transferred to other person.

4. Personal hearing was fixed on 28.04.2021, 12.05.2021, 27.05.2021, 18.06.2021, 16.09.2021 and 05.10.2021. In the personal hearing held, in virtual mode, on 18.06.2021, the departmental representative was directed to submit the case files of the original authority and Commissioner (Appeals), which were received. On 05.10.2021, in the personal hearing held in virtual mode, Sh. Rajnish Kumar, Superintendent appeared on behalf of the Applicant department and reiterated the contents of the revision application and highlighted that the Respondent had made a clear misdeclaration on the Customs Declaration Slip. Sh. S.S. Arora, Advocate appeared for the Respondent and reiterated the contents of the cross-objection dated 10.05.2021. Upon being asked as to how benefit/relief could have been extended to the non-appellants by the Commissioner (Appeals), Sh. Arora replied that the wife and daughter of the Respondent could not file appeals as they were not noticees in the original proceedings.

5.1 The Government has examined the matter. Upon careful perusal of the case papers, following observations are made:

- (i) The Respondent was intercepted, on 14.08.2015, with 3 gold bars weighing 2100 grams, valued at Rs. 47,83,779/-. In the Customs Declaration Slip, the total value of dutiable goods imported was declared as 'Nil' and in column 10(ii) and 10(iii) relating to gold jewellery and gold bullion, respectively, 'No' was indicated.

- (ii) After investigations spread over more than 5 months, the show cause notice dated 28.01.2016 was issued by the Additional Commissioner of Customs, IGI Airport, New Delhi proposing confiscation of the offending goods as the Respondent had not fulfilled the conditions of import of gold in baggage which is in contravention of Section 77 & 79 of the Customs Act, 1962 read with Baggage Rules, 1998 and para 2.2 of Foreign Trade Policy read with rule 3(1)(h) of the Foreign Trade (Exemption from application of rules in certain cases) Rules, 1993.
- (iii) The matter was thereafter adjudicated by the original authority, vide Order-in-Original dated 15.12.2016, when for the first time at the time of personal hearing, it was claimed by the Respondent that he was travelling alongwith his family, i.e., his wife and his daughter. 03 invoices bearing Order No. PB23657 dated 06.08.2015 (for one Kg), Order No. PB23673 dated 10.08.2015 (for 100 gm) & Order No. PB23603 dated 29.07.2015 (for one Kg) were produced. First two invoices were issued in the name of the wife of the Respondent and the third one was issued in the Respondent's own name.
- (iv) It was claimed by the Respondent that his wife and daughter were eligible passengers, a contention which was accepted by the original authority. However, the original authority also held that the Respondent himself was not an eligible passenger as he had stayed abroad for less than six months with stay in India being around 38 days. Accordingly, the original authority ordered confiscation of the seized gold bars, totally weighing 2100 grams, under Section 111(d), 111(i), 111(j), 111(l) & 111(m) of the Customs Act,

1962. However, the gold bars weighing 1100 grams against the invoices in the name of the wife of the Respondent, were allowed to be redeemed on payment of the redemption fine of Rs. 11,00,000/- with concessional duty @ 10.3%. The balance 1000 grams of gold covered by the invoice in the name of Respondent was also allowed to be redeemed on payment of redemption fine of Rs. 10,00,000/- but at baggage duty @ 36.05%. A total penalty of Rs. 15,00,000/- was also imposed on the Applicant.

- (v) In the appeal filed by the Applicant, the Commissioner (Appeals) observed that the Respondent was visiting India with his family, i.e., wife and daughter on the occasion of some scheduled matrimonial ceremonies in the family and the purchase of gold was a family matter among the three passengers, so the option of benefit of concessional rate of duty i.e., 10.3 % should be extended to 2 Kgs of gold for two eligible passengers of the family i.e. Respondent's wife and daughter under relevant notification no. 12/2012 dated 17.03.2012. Accordingly, the Commissioner (Appeals) allowed clearance of 1100 grams of gold covered by the invoices in the name of the wife of the Applicant at concessional duty @ 10.3% but reduced the redemption fine to Rs. 4,80,000/-. Out of the remaining quantity of 1000 grams, another 900 grams were also allowed to be released at concessional duty @ 10.3% with redemption fine of Rs. 4,60,000/-. Balance 100 grams was allowed to be released on redemption fine of Rs. 60,000/- only on payment of baggage duty @ 36.05%. The penalty imposed on the Respondent was also reduced from 15,00,000/- to Rs. 5,00,000/-.

(vi) It is observed from papers in respect of appeal filed before the Commissioner (Appeals), that the Respondent had received the Order-in-Original dated 15.12.2016 on 13.01.2017 whereas the appeal in prescribed format was filed on 31.07.2017. In the interim, Respondent had addressed a letter dated 08.03.2017 to the Commissioner (Appeals) requesting for grant of some time to file the appeal. The Commissioner (Appeals) has treated this letter dated 08.03.2017 as having "effectuated" the appeal and, accordingly, accepted the appeal as within limitation. It is also observed that the office of Commissioner (Appeals) had received the said letter dated 08.03.2017 by post only on 24.03.2017 and had advised the Applicant, vide letter dated 29.03.2017, that an appeal has to be filed within 60 days of the receipt of the adjudication order and that the Commissioner (Appeals) upon being satisfied that the Appellant (i.e., the Respondent herein) was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, can condone the delay of further period of 30 days. It was also clarified that the Commissioner (Appeals) was not empowered to entertain appeal beyond the period of 90 days, i.e., including the condonable period of 30 days.

5.2 The observations made above make it apparent that the proceedings before the lower authorities are replete with infirmities:

(i) The offending goods, i.e., 2100 grams of gold was recovered from the Respondent. The show cause notice in respect of offending goods was also issued to the Respondent. Even though, it is brought out in the proceedings

before the original authority that the family of the Respondent i.e., his wife and daughter also travelled with him when he was intercepted alongwith gold, at no stage till the personal hearing before the original authority, was any claim made by the wife and daughter of the Respondent. Even during the personal hearing, the claim was made by the Respondent without the wife and daughter (who are separate individuals and have their own rights) joining the proceedings and asserting their rights. The Additional Commissioner also extended the benefit of concessional rate of duty in respect of 1100 grams of gold which was covered by the invoices in the name of the wife of the Applicant by treating the wife and the daughter as the eligible passengers. More so, there is no clarity as to how the benefit was extended in the name of the daughter, as neither the invoices were in her name nor any claim was made by her.

- (ii) The letter dated 08.03.2017 of the Respondent which has been treated as having "effectuated" the appeal by the Commissioner (Appeals) was received in the office of Commissioner (Appeals) only on 24.03.2017, i.e., beyond the period of 60 days from the date of receipt of the Order-in-Original, i.e., 13.01.2017. Further, the letter dated 08.03.2017 is merely a request for grant of time for filing appeal and no grounds for appeal are urged therein. The appeal was actually received in the office of the Commissioner (Appeals) on 31.07.2017. Thus, it is apparent that the letter seeking extension of time to file appeal was itself received in the office of Commissioner (Appeals) beyond the limitation period of 60 days and the appeal itself was received much beyond the condonable period of 30 days.

In these circumstances, the decision of Commissioner (Appeals) to consider the letter dated 08.03.2017 seeking extension of time as having effectuated the appeal is erroneous.

- (iii) The wife and daughter of the Respondent herein were not appellants before the Commissioner (Appeals). However, further benefits have been granted in their name as they have been treated as eligible passengers and Respondent was allowed to clear 2000 grams of gold at concessional rate of Customs duty of 10.3%, in their name. It is to be specifically observed that none of the invoices were in the name of the daughter of the Respondent. Further, only 100 grams of gold was held liable to Baggage Rate of duty of 36.05%. Thus, in appeal, the benefit has been extended in the name of persons, who were not parties in appeal and also in the face of documentary evidence produced by the Respondent himself as per which the daughter was not the owner of any part of offending goods as none of the invoices were in her name.

5.3 As such, the Government finds that the impugned order of Commissioner (Appeals) cannot be sustained as the appeal could not have ^{been} entertained, the same having been filed much beyond the period of limitation (including the condonable period of 30 days) provided under Section 128. Even on merits, the benefits have been extended in the name of non-parties (to the appeal) to the Respondent, which could not have been done.

8. In view of the above, the revision application is allowed and the impugned Order-in-Appeal is set aside. However, the penalty of Rs. 15,00,000/- imposed on the Respondent by the original authority is reduced to Rs. 7,50,000/-.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs, Airport & General,
IGI Airport,
New Delhi-110037.

Order No. 208 /21-Cus dated 08/10/ 2021

Copy to:

1. Sh. Arun Kumar Mishra, C/o Sh. S.S. Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi 110029
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi-110037.
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037.
4. Sh. S.S. Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi 110029
5. PA to AS(RA).
6. Guard File.
7. Spare copy.

ATTESTED



(Anshu Raghavan)
Section Officer
Ministry of Finance (Deptt. of Rev.)
Govt. of India
New Delhi