SPEED POST

F. No. 375/05/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 08/08/22

Order No. 260 /22-Cus dated 08-08-2022 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 129DD of the Customs Act 1962 against the Order-in-Appeal No. CC (A)/ Customs / D- I/Air/1724/2021-22 dated 18.10.2021, passed by the Commissioner (Appeals), New Custom House, New Delhi.
Applicant	:	Shri Mohammad Rashid, Delhi.
Respondent	:	Commissioner of Customs, IGI Airport, New Delhi.

ORDER

Revision Application No. 375/05/B/2022-RA dated 31.01.2022 has been filed by Shri Mohammad Rashid, Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)/Customs/D-I/Air/1724/2021-22 dated 18.10.2021, passed by Commissioner of Custom (Appeals), New Delhi. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Refund Order No. 15/2018-19 dated 17.07.2018, passed by the Assistant Commissioner of Customs (Refund), IGI Airport, New Delhi.

2. Brief facts of the case are that, on 28.12.2015, the Applicant herein was intercepted at the IGI Airport, New Delhi and the two rods of gold, totally weighing 290gms., valued at Rs. 6,76,234/-, were recovered from him. The adjudicating authority, vide Order-in-Original No. 206/2016-17 dated 02.01.2017, ordered for absolute confiscation of the recovered gold and imposed a penalty of Rs. 1,30,000/- on the Applicant herein. In the appeal filed by the Applicant herein, the Commissioner (Appeals), vide Order-in-Appeal No. CC(A) Cus/D-I/Airport/126/2018 dated 03.04.2018, ordered for release of confiscated gold on payment of redemption fine of Rs. 1,30,000/- along with applicable duty. The penalty of Rs. 1,30,000/- imposed by the adjudicating authority was upheld. Since the confiscated gold had already been disposed of, the Applicant applied for the refund of sale proceeds. The Assistant Commissioner of Customs (Refunds), vide the aforesaid refund order dated 17.07.2018, sanctioned refund of Rs. 1,65,684/- by considering the value of gold as on the date of seizure and after adjusting duty, redemption fine and penalty. In the appeal filed by the Applicant herein, it was, inter-alia, prayed that the rate of Customs duty was wrongly taken as 38.05% instead of 36.05%; that duty was not required to be deducted as there was no actual redemption of goods. Accordingly, the refund of Rs. 2,60,350/- along with interest @ 9% was prayed for. The Commissioner (Appeals), vide the impugned Order-in-Appeal, allowed the appeal to the extent that the rate of duty should be 36.05% and not 38.05% but did not allow appeal in respect of deduction of duty amount.

3. The revision application has been filed, mainly, on the grounds that the Customs duty is not to be deducted from the international value of gold; that the disposal was made without giving notice to the owner of the goods and, therefore, refund of Rs. 2,43,782/- may be allowed along with interest @ 9%.

4. Personal hearing in the matter was granted on 13.07.2022 and 25.07.2022. In the personal hearing, held on 25.07.2022, Sh. S.S. Arora, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that the gold was disposed of without prior notice to the Applicant and without approval of the

Commissioner (Appeals). A letter dated 29.07.2022 has been received from the respondent department stating that the duty should be charged on the gold to be redeemed, as per the provisions of Section 125(2) of the Customs Act, 1962.

5. The Government has carefully examined the matter. The short point that arises for consideration is whether the Customs duty applicable should have been deducted while granting refund to the Applicant herein. It is observed that, in the present case, though the goods had been disposed of, the sale proceeds had not been realised and, therefore, the original authority had sanctioned the refund on the basis of seizure value of gold. The Commissioner (Appeals) while granting redemption, vide the Order-in-Appeal dated 03.04.2018, had specifically ordered that the goods shall be released on payment of fine, duty and penalty. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, correctly pointed out that this earlier order of Commissioner (Appeals) ordering levy of duty has not been challenged by the Applicant herein and, has therefore, attained finality. In this factual matrix, the Government does not consider it to be a fit case for revision.

6. The revision application is rejected.

(Sandeep Prakash)
Additional Secretary to the Government of India

Sh. Mohammad Rashid, S/o Sh. Rafiqui,
R/o H. No. 1464, Katra Mallah,
Kalan Mahal, Darya Ganj,
Delhi-110002.

Order No. 260/22-Cus dated 08-08-2022

Copy to:

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

ATTESTED

(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