

SPEED POST



F. No. 372/11/B/2022-RA
F. No. 372/12/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 10/8/22

Order No. 962-263/22-Cus dated 10-8-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. KOL/CUS(PREV)/WB/AKR/283-284/2021 dated 16.03.2021 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : 1. Sh. K. Thikka Khan, Chennai.
2. Sh. Md. Dubeal @ John @ David John, Chennai.

Respondent : The Commissioner of Customs (Preventive), Kolkata.

ORDER

Two Revision Applications, bearing Nos. 372/11/B/2022-RA and 372/12/B/2022-RA both dated 30.05.2022, have been filed by Sh. K. Thikka Khan, Chennai (hereinafter referred to as the Applicant-1) and Sh. Md. Dubeal @ John @ David John, Chennai (hereinafter referred to as the Applicant-2) against the Order-in-Appeal No. KOL/CUS(PREV)/WB/AKR/283-284/2021 dated 16.03.2021 passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) rejected the appeals filed by both the Applicants against the Order-in-Original passed by the Additional Commissioner of Customs (P), Kolkata, bearing no. 101/ADC(P)/CUS/WB/18-19 dated 29.03.2019, ordering absolute confiscation of 03 pieces of commercial gold chains and 01 rectangular shaped gold bar, totally weighing 4997.480 gms, valued at Rs. 1,55,82,142/-, recovered from the Applicants, under Section 111(b) and 111(d) of the Customs Act, 1962 along with the concealing material, under Section 119 of the Customs Act, 1962. The original authority also ordered for absolute confiscation of Rs. 14,000/- and Rs. 26,000/- recovered from the Applicant-1 and Applicant-2, under Section 121 of the Customs Act, 1962. Besides penalty of Rs. 20,00,000/- each was imposed on the Applicants, under Section 112 (a) and 112(b) of the Customs Act, 1962.

2. Brief facts of the case are that a specific intelligence had been received by the DRI officers that the Applicants herein had come to Kolkata from Chennai, for taking delivery of gold of foreign origin which had been smuggled into India from Bangladesh. The intelligence further indicated that the gold was concealed inside a Sports Scooter and would be delivered to the Applicants near NSCBI Airport, Kolkata. On 11.04.2018, the DRI officers identified the Applicants and intercepted them and recovered a packet bearing marking "HEAVY DUTY SPORTS SCOOTER LARGE WHEELS PUWHEEL". The Applicants were asked whether they were carrying any contrabands to which they both replied in negative. The packet was examined and found to contain one sports scooter and further examination resulted in recovery of one commercial gold chain (weighing 1119.580 gms) and one rectangular shaped gold bar (weighing 1999.500 gms) of foreign origin from *horizontal base rod* of the said sports scooter. Simultaneously, two commercial gold chains

(weighing 377.900 gms + 1500.500 gms) were also recovered from *vertical axis* of the sports scooter. Thus, totally three pieces of commercial gold chains and one rectangular shaped gold bar, collectively weighing 4997.480 grams, valued at Rs.1,55,82,142/- was recovered from the possession of the Applicants and were seized under Section 110 of the Customs Act, 1962. In his statement dated 12.04.2018, tendered under Section 108 of Customs Act, 1962, the Applicant-1 stated that on 10.04.2018, Sh. Md. Dubeal contacted him to carry smuggled gold of Bangladesh origin alongwith him and thereafter, both of them boarded the plane to reach Kolkata; that on reaching Kolkata, they went to the rented flat of one Sh. Boss at Sukanta Sarani, Etalgacha, Kolkata, and took rest; that Md. Dubeal then contacted the person who was supposed to deliver the smuggled gold and subsequently, the gold was handed over to them near Durganagar Railway Station through a parcel containing "Heavy Duty Sports Scooter", where the smuggled gold was concealed inside. The Applicant-2 stated that he was a BCA, presently unemployed and was living in a rented house with his family; that he met a person named Sh. Samar, who offered him to carry smuggled gold for one person named Sh. Boss when he was in search of a job; that Sh. Samar gave him the mobile number of Sh. Arun, who was supposed to deliver the smuggled gold to him, concealed in parcel; that Sh. Arun called him over phone and handed over the parcel to him, whereas, he carried the parcel in his checked in baggage and handed over the smuggled gold to Sh. Samar at Chennai; that he came to know from Sh. Samar that the gold he had carried was smuggled into India from Bangladesh; that Sh. Boss met him near Dumdum Airport and escorted him to his rented room at Sukanta Sarani, Etalgacha, Kolkata; that he asked Sh. K. Thikka Khan of his locality to accompany him for carrying gold. The original authority, vide the aforesaid Order-in-Original dated 29.03.2019, confiscated absolutely the seized gold items under Section 111(b) and 111(d) of the Act, *ibid* imposed penalty of Rs. 20,00,000/- each, i.e., on Applicant-1 and Applicant-2, respectively, under Section 112 (a) and 112(b) of the Customs Act, 1962. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which have been rejected.

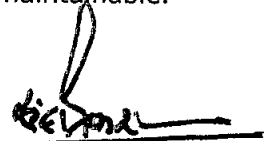
3: The instant revision application has been filed, mainly, on the grounds that the import of gold is not prohibited; that there is no marking on gold evidencing its foreign

origin; that the Applicants have not arrived from abroad and as such not required to make a declaration under Section 77; that the gold be released to the Applicants being the owner of the confiscated goods on payment of nominal redemption fine and penalty.

4. Personal hearings were fixed for 25.07.2022 and 08.08.2022. No one appeared from either side. Vide letter dated 03.08.2022, the Applicants have requested for the case to be decided on the basis of records. Hence, the matter is taken up for decision on the basis of records available.

5. The Government has carefully examined the matter. It is observed that the goods in question were seized from the possession of the Applicants on the road and there is nothing on record to indicate that seized goods were imported as baggage. As such, the instant case does not fall in the category of cases listed in the first proviso to Section 129A(1) of the Customs Act, 1962. Hence, the revision applications are not maintainable under Section 129DD.

6. In view of the above, the revision applications are rejected, as not maintainable.



(Sandeep Prakash)

Additional Secretary to the Government of India

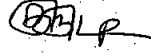
1. Sh. K. Thikka Khan,
S/o Kattu Baba,
R/o 5/3, Feroz Sahib Street,
Jambazar, Chennai-600014.
2. Sh. Md. Dubeal @ John @ David John,
S/o Sh. Liyakat Ali,
R/o 37/1, Unnis Ali Street,
Ellis Road, Mount Road,
Chennai-600014.

Order No. 262-263/22-Cus dated 10-08-2022

Copy to:

1. The Commissioner of Customs (Appeals), 3rd floor, Custom House, 15/1, Strand Road, Kolkata-700001.
2. The Commissioner of Customs (Preventive), Custom House, 3rd floor, 15/1, Strand Road, Kolkata-700001.
3. Sh. Kamalamalar Palanikumar, Advocate, No.10, Sunkurama Street, 2nd Floor, Chennai-600001.
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