

SPEED POST



F. No. 375/37/B/2022-RA
F. No. 375/38/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. 18/9/22

Order No. 293-294/22-Cus dated 16-09-2022 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 129 DD of the Customs Act 1962 against the Order No. Commr/Appeal/Delhi/Cus/12/2020-21/9036 dated 08.03.2022, and Commr/Appeal/Delhi/Cus/12/2020-21/9035 dated 08.03.2022 passed by the office of Commissioner of Customs (Appeals), Delhi.
- Applicant : 1. Sh. Arfeen Chaudhary, Delhi.
2. Sh. Mohd. Iqbal, Delhi.
- Respondent : The Commissioner of Customs (Prev.), New Customs House, New Delhi
-

ORDER

Two Revision Applications, bearing Nos. 375/37/B/2022-RA and 375/38/B/2022-RA both dated 08.06.2022, have been filed by Sh. Arfeen Chaudhary, Delhi (hereinafter referred to as the Applicant-1) and Sh. Mohd. Iqbal, Delhi, respectively (hereinafter referred to as the Applicant-2) against the Orders Nos. Commr/Appeal/Delhi/Cus/12/2020-21/9036 dated 08.03.2022 and Commr/Appeal/Delhi/Cus/12/2020-21/9035 dated 08.03.2022, issued by the office of Commissioner of Customs (Appeals), New Delhi, vide which the appeals filed by the Applicants herein against the Order-in-Original No. DLI/CUS/PREV/AK/JC/345/2021-22 dated 17.11.2021, passed by the Joint Commissioner of Customs, Customs Preventive Commissionerate, New Customs House, New Delhi, have been returned as non-maintainable, on the grounds that the Applicants herein did not make the mandatory pre-deposit of 7.5%, as per Section 129E of the Customs Act, 1962.

2. Briefly stated, the Applicants herein, were intercepted by Narcotics Cell, Crime Branch of Delhi Police while they were travelling in car bearing registration no. DL-8C-AK-3046, from Lucknow to Delhi. Both the Applicants were found carrying paste suspected to be gold concealed in jeans (Belt and Bottom margin) and further kept in the brown colour bag. A quantity of 398 gms of gold paste in the form of 06 strips along with 04 new I-phone mobiles (02 iPhone-11 Model & 02 iPhone-11 Pro Model) were recovered from their possession. Both the Applicants along with recovered items were handed over by Delhi Police to the officers of Customs Preventive, NCH, New Delhi on 06.09.2020. The recovered gold paste was subjected to extraction of gold and the proceedings were recorded in Panchnama dated 07.09.2020 and after extraction proceedings, a total of 283.99 grams having purity 995, collectively valued at Rs. 13,25,750/- was recovered. The recovered 04 new iPhones were valued at Rs. 3,00,000/-. Thereafter the recovered 283.99 grams of gold (retrieved after extraction) and 04 new iPhones were seized under Section 110 of customs Act, 1962 as both the Applicants failed to provide any document indicating their licit possession. The car bearing registration No. DL-8C-AK-3046 was also seized under Section 115 of the Act, ibid. The statements of both the Applicants were recorded, under Section 108 of Customs Act, 1962, wherein, they admitted that they were involved in transportation of smuggled gold and other articles in the present instance as

well in their past visits. Further, investigations revealed that in his past 05 trips, the Applicant-2 had transported 2271.92 grams of gold, collectively valued at Rs. 1,06,06,000/- and similarly, the Applicant-1, in his past 02 trips had transported 567.98 grams of gold, collectively valued at Rs.26,51,5000/- along with other smuggled items. The original authority, vide the aforesaid Order-in-Original dated 17.11.2021, ordered for absolute confiscation of gold weighing 283.99 grams, collectively valued at Rs. 13,25,750/- along with 04 iPhones, valued at Rs. 3,00,000/- under Section 111(d), 111(i), 111(j), 111(l), 111(m) & 111(o) of the Customs Act, 1962. Penalty of Rs 7,00,000/- each was imposed on both the Applicants under Section 112 and penalty of Rs. 7.00,000/- each, was also imposed on both the Applicants under Section 114AA of the Customs Act, 1962 for their acts of omission and commission. Further, the vehicle used in the transportation of smuggled goods was also confiscated under Section 115 of Act, ibid, however, it was allowed to be redeemed on payment of fine of Rs. 1,50,000/-. Owner of the vehicle is not a party to the present proceedings. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals) which have been returned to the Applicants on the grounds that mandatory pre-deposit of 7.5% of penalty amount had not been made, in terms of provisions of Section 129E of the Customs Act, 1962.

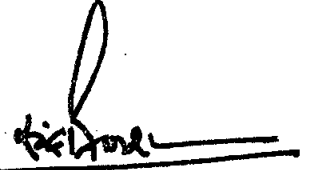
3. The revision application has been filed, mainly, on the grounds that the appeals were rejected, merely, on technical ground, i.e., of not making pre-deposit; that Applicants are poor and not in a position to make pre-deposit. Some averments have also been made on the merits of the case.

4. Personal hearing, in virtual mode, was held on 16.09.2022. Ms. Sangita Bhayana, Advocate appeared for the Applicants and submitted that the Applicants are in poor financial condition due to which they have not been able to make the requisite pre-deposit. She requested that two months time may be granted to make the pre-deposit subject to which the matter may be remanded for decision on merits. No one appeared for the respondent department nor any request for adjournment was received.

5. The Government has examined the matter carefully. The Commissioner (Appeals) has returned the appeals on the ground that the Applicants did not make mandatory pre-

deposit of 7.5%, as required in terms of Section 129E of the Customs Act, 1962. It is not disputed by the Applicants that the pre-deposit ought to have been made for the appeals to be entertained by the Commissioner (Appeals). It is observed that there was ample time with the Applicants to make the pre-deposit, but the same was not done. Even at this late stage, the Applicants have not made the pre-deposit but have requested for 02 months time to make the same. The Government observes that, as per Section 129E, the Commissioner (Appeals) "shall not entertain any appealunless the appellant has deposited seven and a half percent of the..... penalty,..... in dispute." Thus, it is to be observed that there is no provision, in law, to grant time to make the pre-deposit, as requested for. As such, the request made by the Applicants does not merit consideration.

6. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

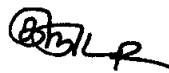
1. Sh. Arfeen Chaudhary,
S/o Sh. Mohd. Yameen,
R/o 314, Galigarhaiya, Matia Mahal,
Jama Masjid, Delhi-110006.
2. Sh. Mohammad Iqbal,
S/o Sh. Ahmad Hasan,
R/o S-6, DDA Flats, Shish Mahal,
Behind Delite Cinema, Asaf Ali Rd,
Delhi-110002.

Order No. 293-294/22-Cus dated 16-09-2022

Copy to:

1. The Commissioner of Customs (Preventive), New Customs House, New Delhi-110037
2. The Commissioner of Customs (Appeals), New Customs House, New Delhi-110037
3. Ms. Sangita Bhayana, Advocate, Chamber No. 707, LCB-III, Delhi High Court, New Delhi-110003, Mobile No. 98110-18259.
4. PS 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