

SPEED POST



F. No. 373/115/B/2016-RA  
F. No. 373/115-A/B/2016-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue..16/11/22

Order No 346-347/22-Cus dated 16-11-2022 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 Applications filed under Section 129 DD of the Customs Act 1962 against the Order No. C. Cus-I No. 105 & 106/2015 dated 29.01.2016 passed by the office of Commissioner of Customs (Appeals-I), Chennai.

Applicant : 1. Sh. M. Irfan, Chennai.  
2. Sh. Ghouse Samdani, Chennai.

Respondent : The Pr. Commissioner of Customs, Airport, Chennai.

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## ORDER

Two Revision Applications, bearing Nos. 375/115/B/2016-RA and 375/115-A/B/2016-RA both dated 04.07.2016, have been filed by Sh. M. Irfan, Chennai (hereinafter referred to as the Applicant-1) and Sh. Ghouse Samdani, Chennai (hereinafter referred to as the Applicant-2), respectively, against the Order-in-Appeal No. C. Cus-I No. 105 & 106/2015 dated 29.01.2016, passed by the Commissioner of Customs (Appeals-I), Chennai, vide which the appeals filed by the Applicants herein against the Order-in-Original No. 319/2015-Airport dated 11.09.2015, passed by the Additional Commissioner of Customs (Adjudication-Air), Chennai have been dismissed 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. The case relates to seizure of 4.088 Kgs of gold, totally valued at Rs. 1,28,14,994/-, from various passengers at Chennai airport, upon their arrival from Dubai, on 21.11.2013. During the examination of baggage recovered from a car and baggage of passengers intercepted by the officers & personal search of the said passengers, *36 cut pieces of gold, totally weighing 3855.3 gms, valued at Rs. 1,18,01,073/-, 04 gold chains, totally weighing 232.8 gms, valued at Rs. 7,12,601, 04 nos. of Dell laptops valued at Rs. 1,00,000/-, 04 nos. of mobile phones viz. Samsung Galaxy Note 3, valued at Rs. 1,66,000 and electronic goods namely speaker systems, fan, chocolates, biscuits etc, valued at Rs. 25,320/- were recovered.* These items along with said Car bearing registration no. TN-06-6345, valued at Rs. 3,00,000/-, were seized under Mahazar proceedings dated 21.11.2013. The mobile phones used by the Applicant-1 and his accomplice were also seized for further investigations. The statements of the Applicant-1, 03 accomplice of Applicant-1, all the 05 passengers and the Applicant-2, were recorded on 21.11.2013, 16.12.2013 and 10.04.2014, under Section 108 of Customs Act, 1962, wherein, they admitted that they were involved in smuggling of gold and gold articles in association with various passengers and overseas suppliers in the present instance as well in the past. Further, investigations revealed that, in past, the Applicant-1 and Applicant-2 had transported 3.45 Kg of gold, collectively valued at Rs. 1,00,05,000/- in a concealed manner. The original authority, vide the aforesaid Order-in-Original dated 11.09.2015, ordered for absolute confiscation of seized items (except the Car), under Section 111(d) & 111(l) and 119 of the Customs Act, 1962. Penalty of 40 Lakh and Rs 50 Lakh, was imposed on Applicant-1 and Applicant-2, respectively, under Section 112(a) & 112(b) 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/-. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals) which have been dismissed as non-maintainable 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 applications have been filed, mainly, on the grounds that the show cause notice was issued on 20.05.2013, i.e., much before 06.08.2014 when the provision regarding pre-deposit were inserted in the Customs Act, 1962; that the penalty imposed is

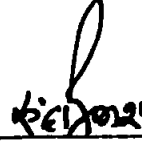
huge and disproportionate; that, therefore, the condition of pre-deposit may be dispensed with. Some averments have been made on the merits of the case as well. Written submissions have also been made vide letter dated 18.04.2018.

4. Personal hearing was held on 19.04.2018, which was attended by Sh. S. Palanikumar, Advocate for the Applicants. Sh. Palanikumar reiterated the submissions made in the revision applications. Due to change in revisionary authority, the personal hearing was again granted on 14.09.2021, 21.09.2021, 26.10.2021, 02.11.2021, 08.12.2021, 07.11.2022 and 15.11.2022. No one appeared for either side nor any request for adjournment has been received. As such, it is presumed that neither side has anything to add in the matter.

5.1 The Government has examined the matter carefully. The Commissioner (Appeals) has rejected 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 the contention of the Applicant that since show cause notice was issued on 20.05.2013, i.e., before the insertion of amended Section 129E in the Customs Act, 1962, on 06.08.2014, the requirement of pre-deposit may be waived. The Government finds that the Commissioner (Appeals) has rejected this contention of the Applicant by relying upon the judgment of Hon'ble Allahabad High Court in the case of Ganesh Yadav vs. UOI {2015 (39) STR 177 (All.)}. In the case of Ganesh Yadav Yadav (supra), the Hon'ble Allahabad High Court has held that the amended Section 35F of the Central Excise Act, 1944 corresponding to Section 129E of the Customs Act, 1962 is applicable to appeals filed on or after 06.08.2014. In the present case, the Order-in-Original was passed on 11.09.2015 and appeals were filed before the Commissioner (Appeals) thereafter, i.e., much after the insertion of amended Section 129E in the Customs Act, 1962, by virtue of Section 89 of Finance (No. 2) Act, 2014 (25 of 2014). The Government also finds that the Hon'ble Madras High Court i.e., the jurisdictional High Court has, in the case of Dream Castle vs. UOI {2016 (43) STR 25 (Mad.)}, rejected the contention that amended provisions of Section 35F of the Central Excise Act, 1944 (which are corresponding to the amended proviso of Section 129E *ibid*) are applicable only to show cause proceedings initiated on or after 06.08.2014. Therefore, the Government does not find any infirmity in the impugned Order of Commissioner (Appeals).

5.2 It is also observed that the Applicants have paid RA fee of Rs. 200/- only while filing the instant revision applications. In terms of sub-section (3) of Section 129DD of the Act *ibid*, a fee of Rs. 1000/- is to be paid where amount of penalty levied is more than Rs. 1,00,000/- and the fee of Rs. 200/- is to be paid where penalty imposed is Rs. 1,00,000/- or less. In the present case, the penalties of Rs. 40,00,000/- and Rs. 50,00,000/- have been imposed on the Applicant-1 & 2, respectively. The Applicants were, therefore, advised to pay the balance amount of Rs. 800/-, vide letters dated 26.08.2016, 26.10.2022 and 07.11.2022. However, the balance amount has not been paid. Therefore, the instant revision applications are liable to be dismissed on this ground as well.

6. The revision applications are rejected for reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India

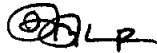
1. Sh. Irfan  
S/o Sh. Mahboob Ali,  
R/o No. 72, IInd Floor,  
Venkatesan Gramani Street,  
Chindadripet, Chennai-600 002.
2. Sh. Ghouse Samdani  
S/o Ibrahim,  
R/o No. 144, Samy Naicken Street,  
Chindadripet, Chennai-600 002.

Order No. 346-347/22-Cus dated 16-11-2022

Copy to:

1. Pr. Commissioner of Customs, Airport, New Custom House, Air Cargo Complex, Meenambakkam, Chennai-600016.
2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. Sh. S. Palani Kumar, Advocate, 10, Sunkurama Street, Chennai-600 001.
4. PS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board

ATTESTED



16.11.22

(लक्ष्मी राघवन)  
(Lachmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi