

F. No. 373/61/B/2017-RA
F. No. 373/62/B/2017-RA
F. No. 373/76/B/2017-RA
F. No. 373/90/B/2017-RA

SPEED POST



F. No. 373/61/B/2017-RA
F. No. 373/62/B/2017-RA
F. No. 373/76/B/2017-RA
F. No. 373/90/B/2017-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 18/11/22

Order No. 351-354/22-Cus dated 18-11-2022 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-in-Appeal No. TCP-CEX-000-APP-104 to 107-2016 dated 02.06.2016 passed by the Commissioner of Central Excise (Appeals-II), Tiruchirappalli

Applicant : 1. Sh. C. Govindarajan, Nagapattinam (deceased)
2. Sh. G. Maheswaran, Nagapattinam
3. Sh. R. Kanthasamy, Nagapattinam
4. Smt. G. Meenakshi, Nagapattinam

Respondent : The Commissioner of Customs, Tiruchirappalli

ORDER

Revision Application Nos. 373/61/B/2017-RA dated 20.04.2017, 373/62/B/2017-RA dated 20.04.2017, 373/76/B/2017-RA dated 05.05.2017 and 373/61/B/2017-RA dated 06.06.2017 have been filed by Sh. C. Govindarajan, Nagapattinam (deceased) through his legal heir Sh. G. Maheswaran (hereinafter referred to as the Applicant-1), Sh. G. Maheswaran, Nagapattinam (hereinafter referred to as the Applicant-2), Sh. R. Kanthasamy, Nagapattinam (hereinafter referred to as the Applicant-3) and Smt. G. Meenakshi, Nagapattinam (hereinafter referred to as the Applicant-4) against the Order-in-Appeal No. TCP-CEX-000-APP-104 to 107-2016 dated 02.06.2016, passed by the Commissioner of Central Excise (Appeals-II), Tiruchirappalli. The Commissioner (Appeals) has, vide the above-mentioned Order-in-Appeal, rejected the appeals filed by Sh. G. Maheswaran, Sh. R. Kanthasamy and Smt. G. Meenakshi, against the Order-in-Original No. 02/2015 (JC) dated 30.04.2015 passed by the Joint Commissioner of Customs, Tiruchirappalli on the grounds that the Applicants did not make the mandatory pre-deposit of 7.5%, as per Section 129(E) of the Customs Act, 1962. The appeal filed by Sh. C. Govindarajan has been dismissed as he had expired on 14.03.2015. The original authority had vide aforesaid Order-in-Original dated 30.04.2015 absolutely confiscated 34 nos of gold bars, totally weighing 15.255 Kg and valued at Rs. 4,59,17,550/-, recovered from the possession of Applicant-1 and Applicant-3. Besides, penalties of Rs. 2,00,00,000/- on Applicant-3, Rs. 1,00,00,000/- on Applicant-2 and Rs. 1,50,00,000/- on Applicant-4 have been imposed under Sections 112(a)/112(b) of the Customs Act, 1962. No penalty has been imposed on Applicant-

1 as he had expired. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which have been rejected.

2. Brief facts of the case are that officers of Directorate of Revenue Intelligence, Chennai Zonal Unit (CZU-DRI) on a specific intelligence, intercepted Applicant-1 and Applicant-3 who were riding a motorcycle, on 01.09.2013, near Alangudi Bridge on Vedaranyarn-Thiruvallur road. On persistent enquiry and questioning by the officers, the Applicant-1 and Applicant-3 admitted to be carrying gold bars of foreign origin which were concealed in the side-luggage box of the motorcycle containing therein three packets wrapped with brown self-adhesive tapes and admitted that all the packets contained gold bars of foreign origin smuggled from Sri Lanka into India through sea-route. They further admitted that they were also carrying the gold bars in a cloth waist pouch with shoulder hanging, specially made to conceal the gold bars tied to their waist and produced the same to the officers. On enquiry, Sh. C. Govindarajan stated that these gold bars were smuggled into India from Sri Lanka by boat via Thopputhurai coast; that his son Sh. G. Maheswaran would normally proceed to Thiruvarur by bus and let them know whether the route viz., from Thopputhurai to Thiruvarur is clear without any checks by any enforcement agencies on the way and wait for them at Thiruvarur Bus Stand; that thereafter, he would call his mother Smt. Meenakshi and after getting clearance, they would proceed to Chennai with the gold bars. The Government approved Gold Assayer, assayed and certified the 34 gold bars as of 24 carat purity, totally weighing 15.255 Kg and valued at Rs. 4,59,17,550/-. On further enquiry, Sh. C. Govindarajan and Sh. Kanthasamy

stated that they did not have any documents for the licit possession/import of the said 15.255 Kg of smuggled gold bars of foreign origin.

3. The revision applications have been filed, mainly, on the grounds that the impugned order is against law, weight of evidence and circumstances and probabilities of the case; that statements were obtained by way of force, threat and intimidation; that the seized goods are procured in the local market and not from any foreign country; and that the goods are not of smuggled character nor the same are notified goods by which bringing the goods is strictly prohibited.

4. Personal hearing in the matter was granted on 13.11.2018, 03.11.2021, 10.11.2021 and 18.11.2022. No one appeared for either side nor any request for adjournment has been received. Sh. B. Dhanasekaran, Advocate, vide letter dated 12.11.2021, waived the hearing and requested to pass the order on the basis of available records.

5.1 The Government has examined the case. At the outset, it is observed that the RA No. 373/61/B/2017-RA has been filed on behalf of Sh. C. Govindarajan (deceased) by his legal heir. However, the records of the authorities below show that Sh. C. Govindarajan has not been visited with any penalty etc. as he had expired during the pendency of proceedings at the original stage: In such a situation the proceedings against him have abated and the Commissioner (Appeals) has correctly refused to entertain the appeal filed on his behalf. As such, there is no *raison d'être* for the subject revision application filed on behalf of Applicant-1.

5.2 The appeals filed by other Applicants have been rejected by the Commissioner (Appeals) on the ground that the Applicants herein did not make mandatory pre-deposit of 7.5% of the penalty imposed on them, as required in terms of Section 129E of the Customs Act, 1962. Relevant extracts of Section 129E *ibid* are reproduced as under:

"Section 129E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal: The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,-

- (i) Under sub-section (1) of Section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Principal Commissioner of Customs or Commissioner of Customs;*
- (ii) Against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;*"

On a plain reading of Section 129E, it is apparent that the appeal cannot be entertained by the Commissioner (Appeals) unless requisite pre-deposit has been made. In other words, the requirement of pre-deposit is mandatory in nature. The Government observes that the revision applications are conspicuously silent on this

issue and offer no defence or explanation whatsoever in this respect even though their appeals have been rejected by the Commissioner (Appeals) on this ground alone. It is, thus, apparent that the Applicants are in no position to dispute the statutory position based whereupon their appeals have been rejected.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

1. Sh. C. Govindarajan (deceased) through Sh. G. Maheswaran
No. 11, Puthukollai Veli
Thethakudi South
Vedaranyam Taluk
Nagapattinam
2. Sh. G. Maheswaran
S/o Sh. C. Govindarajan
No. 11, Puthukollai Veli
Thethakudi South
Vedaranyam Taluk
Nagapattinam
3. Sh. R. Kanthasamy
S/o Sh. S. Rajagopal
No. 75, SethuRoad
Vedaranyam, Nagapattinam
4. Smt. G. Meenakshi
W/o Sh. C. Govindarajan
No. 11, Puthukollai Veli
Thethakudi South
Vedaranyam Taluk
Nagapattinam

Order No. 351-354/2022: 22-Cus dated 12-11-2022

F. No. 373/61/B/2017-RA

F. No. 373/62/B/2017-RA

F. No. 373/76/B/2017-RA

F. No. 373/90/B/2017-RA

Copy to:

1. The Commissioner of Central Excise (Appeals-II), No. 1, Williams Road, Cantonment, Tiruchirappalli.
2. The Commissioner of Customs, No. 1, Williams Road, Cantonment, Tiruchirappalli.
3. Sh. B. Dhanasekaran, Advocate, No. 21, Kubera building, Sunk ram Street, Second Floor, Chennai-600001.
4. PA to AS(RA).
5. Guard File.
- ✓ 6. Spare Copy.
7. Notice Board.

ATTESTED



अनंद कुमार लॉ / Anand Kumar Lau
अधीक्षक / Superintendent (R.A. Unit)
कर वसुली विभाग / Department of Revenue
द्वितीय श्रेणी / Deputy of Revenue
कमरा नं. 202, 201 फ्लोर, 201/202
14, कलकत्ता रोड, चेन्नई-600001

UNIVERSITY MICROFILMS
SERIALS ACQUISITION
300 N ZEEB RD
ANN ARBOR MI 48106
616 763 0900