

SPEED POST



F. No. 373/180/B/2018-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 28/11/22

Order No. 369/22-Cus dated 28-11-2022 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 Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. TCP-CUS-000-APP-183 to 185-2016 dated 21.09.2016 passed by the Commissioner of Central Excise (Appeals-II), Tiruchirappalli

Applicant : Sh. C. Chandrasekaran, Nagapattinam

Respondent : The Commissioner of Customs, Tiruchirappalli

ORDER

Revision Application No. 373/180/B/2018-RA dated 15.05.2018, has been filed by Sh. C. Chandrasekaran, Nagapattinam (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-183 to 185-2016 dated 21.09.2016, 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. C. Chandrasekaran and two others, against the Order-in-Original No. 68/2015 dated 08.10.2015 passed by the Joint Commissioner of Customs, Tiruchirappalli on the grounds that the appeals were time barred and also Applicant did not make the mandatory pre-deposit of 7.5%, as per Section 129E of the Customs Act, 1962. The original authority had, vide aforesaid Order-in-Original dated 08.10.2015, absolutely confiscated 198 nos of gold bars and 6 cut pieces of gold, totally weighing 20802.850 gms and valued at Rs. 5,81,31,923/-, recovered from the possession of different persons. Further, one Bolero and one Innova vehicle valued at Rs. 3,00,000/- and Rs. 4,00,000/-, respectively, were also ordered to be confiscated, but these were allowed to be redeemed on payment of fine of Rs. 1,60,000/- and Rs. 1,80,000/-, respectively. Besides, penalty of Rs. 4,00,000/- on the Applicant herein has been imposed under Sections 112(b) of the Customs Act, 1962. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), which has 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, chased and intercepted a Bolero vehicle on 15.06.2013 at about 04:30 hrs, near Thiruvarur. During the search of the vehicle, 3 packets wrapped with brown colour cellophane adhesive tape kept concealed under the gear rod boot of the vehicle were recovered. On examination, 88 gold bars with foreign markings and 6 cut pieces of unmarked gold of different sizes were found. The Gold Assayer assayed the gold as 24 carat and weighed the gold items to be 9802.850 gms and valued the same as Rs. 2,72,51,923/-. No customs duty paid receipt or import/transport document was found with the occupants of the vehicle to prove the licit nature of the gold. Further, an Innova

vehicle was also intercepted on the same day at about 07:00 hrs near Police Check Post, Kollidam Bridge at Sirkazhi. On examination of the vehicle, gold bars of foreign origin wrapped with brown colour adhesive tapes in 4 packets were found concealed under the plastic mat around gear rod boot of the said vehicle. The recovered packets were opened and found to contain 110 gold bars. The Gold Assayer certified them to be of 24 carat gold, weighing totally 11 Kg and valued at Rs. 3,05,80,000/-. No documents were found with the occupants of the vehicles to prove the licit possession of the gold bars. Thus, total 198 nos of gold bars and 6 cut pieces of gold, totally weighing 20802.850 gms valued at Rs. 5,81,31,923/-, were recovered from both the vehicles.

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; and that gold was not seized from the Applicant.

4. Personal hearing in the matter was fixed on 28.11.2022. No one appeared for either side nor any request for adjournment has been received. For the reasons brought out hereinafter, the matter is being taken up for disposal based on records, without offering any further opportunity of hearing.

5.1 The Government has examined the matter carefully. One of the grounds, on which the appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals), is that it was filed beyond the period of limitation provided under Section 128 of the Customs Act, 1962. The Commissioner (Appeals) has recorded that the appeal against the Order-in-Original dated 08.10.2015 has been filed on 12.02.2016 i.e. after 117 days from the date of receipt of the said order on 15.10.2015. It is observed that, in terms of Section 128 of the Customs Act, 1962, the appeal before the Commissioner (Appeals) can be filed within a period of sixty days. The Commissioner (Appeals) can condone a delay up to thirty days, on sufficient cause being shown. As correctly highlighted by the Commissioner

(Appeals), the Hon'ble Delhi High Court has, in the case of M.R Tobacco vs. UOI {2004 (178) ELT 137 (Del.HC-DB)}, held that the Commissioner (Appeals) cannot condone the delay beyond statutory limit. The Government observes that the Hon'ble Supreme Court has, in the case of Singh Enterprises vs. Commissioner of Central Excise, Jamshedpur {2008 (221) ELT 163 (SC)}, held on the same lines. Therefore, the Government finds no infirmity in the impugned OIA.

5.2 Further, the appeal filed by the Applicant has also been rejected by the Commissioner (Appeals) on the ground that the Applicant herein did not make mandatory pre-deposit of 7.5% of the penalty imposed on him, 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. Hence, there is no infirmity in the impugned OIA on this count as well.

5.3 The Government observes that the revision application is conspicuously silent on the above issues which have led to rejection of the appeal filed before the Commissioner (Appeals) and offers no defence or explanation whatsoever in this respect. It is, thus, apparent that the present application is perfunctory in nature and appears to have been filed to somehow prolong the dispute.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

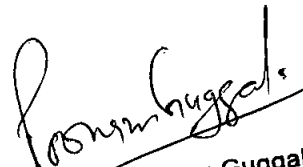
Sh. C. Chandrasekaran
S/o Sh. Chinnathambi
No.3/337, Kandiankadu
Vettaikaraniruppu-611112
Nagapattinam District

Order No. 369/2021-22-Cus dated 28-11-2022

Copy to:

1. The Commissioner of Central Excise (Appeals-II), No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
2. The Commissioner of Customs, No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. Ms. Kamalamalar Palanikumar, Advocate, No. 10, Sunk ram street, Second Floor, Chennai-600001.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



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