

SPEED POST



F. No. 380/03/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 21/12/22

Order No. 390/22-Cus dated 20-12-2022 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 C.Cus-I No. 13 dated 13.01.2017 passed by the Commissioner of Customs (Appeals-I), Chennai.
- Applicant : Pr. Commissioner of Customs, Chennai-I (Airport), Chennai.
- Respondents : 1. Sh. Abhishek Betala, Chennai.
2. M/s. Prakash Gold Palace Pvt. Ltd., Chennai.

ORDER

A Revision Application bearing No. 380/03/B/2017-RA, dated 24.04.2017, has been filed by the Pr. Commissioner of Customs, Chennai-I (Airport) (hereinafter referred to as the Applicant department) against Order-in-Appeal C.Cus-I No. 13 dated 13.01.2017 passed by the Commissioner of Customs (Appeals-I), Chennai. Commissioner (Appeals) has upheld the Order-in-Original passed by the Joint Commissioner of Customs (Adjudication-Air), New Custom House, Meenambakkam, Chennai, bearing no. 152 dated 12.03.2015. Vide the aforesaid Order-in-Original proceedings initiated against Sh. Abhishek Betala, Chennai (hereinafter referred to as Respondent-1) (an employee of M/s. Prakash Gold Palace Pvt. Ltd.) & M/s. Prakash Gold Palace Pvt. Ltd., Chennai (hereinafter referred to as Respondent-2) have been dropped.

2. Brief facts of the case are that Respondent-1 alongwith one Sh. Deepak Gheesulal Siroya arrived from Dubai at Chennai Airport on 22.08.2014. After scanning of hand bag, 12 Kgs of gold in the form of gold bars was recovered from the bag of Respondent-1 in a steel grey colour metallic box. Besides that one invoice No. KJ/167 dated 21.08.2014 issued by M/s. Kundan Jewellery (LLC), Dubai, UAE for advance supply of 12000 gms of gold for manufacturing of jewellery in the name of Respondent-2 was also recovered. The Government approved Gold Appraiser examined and certified them to be of 24 carat purity totally weighing 12000 gms and valued at Rs. 3,38,24,000/-. On being asked as to whether Respondent-1 was possessing any valid permit or any authorization for the legal import of the recovered gold, he replied in negative and also stated that the said gold and the aforesaid invoice issued in the name of M/s. Prakash Gold Palace Pvt. Ltd. (Respondent-2) were hand carried only by him in his hand bag throughout the journey till the Customs Arrival Hall. He further stated that he and Sh. Deepak Siroya were employees of Respondent-2. Sh. Deepak Gheesulal Siroya acknowledged the narration of Respondent-1 as true. He further acknowledged

that no intimation was submitted to the Authorized Officer, as per the provisions of Rule 29(5) of the Special Economic Zones Rules, 2006. He further informed that he was the authorized passenger to carry the gold and not Respondent-1 and the package of gold did not bear any markings as prescribed in the SEZ, rules, 2006. He further added that due to urgency the consignee's name and address were not mentioned in the packages and also admitted that he had failed to adhere to the rules provided under Rule 29(5) of SEZ Rules, 2006, as amended. Respondent-1 stated that the gold did not belong to him and he had failed to declare the same to Customs, and that he was not the authorized passenger as per provisions of Rule 29(5) of the Special Economic Zones Rules, 2006, as amended. The original authority dropped the SCN proceedings taking into consideration the facts of the case and observing that SCN has been issued against Respondent-1 whose name is not mentioned in Detention Receipt and therefore case against him is not sustainable. For Respondent-2, the original authority held that they are a Unit situated in SEZ having a valid LOA and are, therefore, entitled to import duty free gold freely without any restriction as per the provisions of the Foreign Trade Policy & SEZ Rules, 2006. It was further held that for non-compliance of the provisions of Rule 29(5) of the SEZ Rules, 2006 and Facility Circular No. 03/07 dated 03.03.2007 for the hand carry facility by the EOU/SEZ units, action can be initiated against them under Section 22 or any other relevant section of the SEZ Act, 2005. Aggrieved by the order passed by the original authority, the department filed an appeal with the Commissioner (Appeals), who disposed of the appeal vide OIA C.Cus-I No. 402/2005 dated 12.08.2015 absolutely confiscating the impugned gold valued at Rs. 3,38,54,000/- and imposed a personal penalty of Rs. 1,00,00,000/- (Rupees one crore) on Respondent-1 under Section 112(a)&(b) of the Customs Act, 1962 and imposed a penalty of Rs. 1,00,00,000/- (Rupees one crore) on Respondent-2 under Section 112(a) ibid. Aggrieved by the OIA dated 12.08.2015, the Respondents herein filed Writ Petitions before the Hon'ble High Court of Madras. The Hon'ble High Court, vide order dated 18.12.2015 in WP Nos. 11898 and 26133 of 2015, set aside the OIA dated 12.08.2015 and remanded the case to the Commissioner (Appeals) to consider the matter afresh.

Thereafter, vide impugned Order-in-Appeal No. C.Cus-I No. 13 dated 13.01.2017, department's appeal was rejected and Order-in-Original was upheld.

3. The instant revision application has been filed, mainly, on the grounds that Respondent-2 did not file the advance intimation and acknowledgement was not obtained from the authorized officer of the SEZ; that marking and packing as specified in the Circular issued by the Commissioner of Customs have not been followed and the prior intimation has not been given to proper officer of the Customs in the Airport arrival hall; and that Respondent-1 did not declare the gold in the Customs Declaration Card as per Section 77 of the Customs Act, 1962.

4. Personal hearing was fixed on 22.10.2018, 19/20.11.2018, 17/18.12.2018, 28.11.2019, 05.12.2019, 12.12.2019, 08.12.2020, 15.12.2020, 22.12.2020, 16.11.2022, 21.11.2022 & 14.12.2022. In the hearing held on 16.11.2022, in virtual mode, Sh. Anburaju, AC appeared for the Applicant department and reiterated the contentions of the RA. Upon being asked, he requested for time to produce copies of (i) DR issued by the Customs officers, (ii) correspondence with Development Commissioner, SEZ in the matter and (iii) authorization issued by DC, SEZ for carriage of gold to SEZ unit upon its release pursuant to impugned OIA. Sh. T. Sudhan Raj, Advocate appeared for the Respondent and supported the impugned OIA. He highlighted that the goods were carried by Sh. Abhishek Betala at the instance of Sh. Deepak Gheesulal Siroya, who had been authorized by DC, SEZ to carry gold. Upon being asked Sh. Sudhan Raj requested for time to produce copies of (i) DR issued by the Customs officers, (ii) authorization issued by the DC, SEZ to Sh. Deepak, (iii) authorization issued by DC, SEZ to carry gold to SEZ unit pursuant to release in terms of OIA. He also sought time to make a written submission specifically to address the issue whether contravention of Rule 29(5) of SEZ Rules will attract Section 111(d) of the Customs Act, 1962. With the consent of parties time was granted upto 18.11.2022 (A.N) to file documents and make written submissions. Matter was kept for final hearing to 21.11.2022 at 1400 hrs. In the hearing held on, 21.11.2022, in virtual mode, at the

outset, it was observed that on the last date of hearing i.e. 16.11.2022, both sides were required to produce certain documents. While the Respondents have filed certain documents, all the documents have not been filed. Department has filed no document. In this background, at the request of the parties they were provided one last opportunity to file all documents/submissions by 13.12.2022 and P.H was adjourned to 14.12.2022. In the hearing held on 14.12.2022, in virtual mode, Sh. Anburaju, AC appeared for the Applicant department and stated that the documents have been furnished, vide email dated 13.12.2022. Sh. T. Sudhan Raj, Advocate stated that Respondent have already submitted documents as available with them and also made written submissions. He supported the Order of Commissioner (A) on the basis of submissions already made.

5.1 The Government has examined the matter carefully. It is observed that the Respondent-1, namely, Sh. Abhishek Betala and Sh. Deepak Gheesulal Siroya are the employees of Respondent-2, which is a SEZ Unit with a valid LOA. Respondent-2 are, therefore, entitled to import duty free gold freely. The Respondent-1 and Sh. Deepak Siroya had proceeded to Dubai, inter-alia, to hand carry 12 Kg of gold for Respondent-2. Sh. Deepak Siroya was the authorized passenger to carry the gold. It emerges from the records of proceedings below that both these persons travelled together to Chennai and the handbag from which the gold was recovered belonged to Sh. Deepak Siroya though it was carried by Respondent-1. Further, when during scanning of handbag the images of heavy objects were noticed by the Customs officer, Sh. Deepak Siroya declared orally the 12 Kgs gold in the handbag. Pursuant to the oral declaration when the Customs Declaration Card of both the passengers were verified by the Customs officer, it was found that Sh. Deepak Siroya had declared 12 Kgs in his Customs Declaration Card whereas Respondent-1 had declared 'NIL' in his Customs Declaration Card. It has also been found by Commissioner (Appeals) that Sh. Deepak Siroya was the authorized person of Respondent-2. The Government observes that the DR No. 5533/AIUA/aco2 dated 22.08.2014, i.e., the ^{Detection} Receipt was prepared by the Customs officer in the name of Sh. Deepak Gheesulal Siroya. Thus, the facts found to

be established by the Commissioner (A) get supported by the DR so prepared. There is nothing in the RA to controvert this factual position. In any case, if it were to be presumed that the gold was sought to be smuggled by the Respondent-1 for Respondent-2, there is no plausible explanation forthcoming as to what happened to the 12 Kg gold declared by Sh. Deepak Gheesulal Siroya. In the conspectus of these facts and circumstances, the Government is in agreement with the Commissioner (Appeals) that the gold, in the present case, was actually the gold being carried by Sh. Deepak Gheesulal Siroya, the authorized person for Respondent-2, and in respect of which Declaration was made by Sh. Deepak both orally and in writing.

5.2 In respect of the contravention of the procedure prescribed in the Customs Facility Circular No. 02/2007 dated 08.03.2017 and Rule 29(5) of the SEZ Rules, the Government is in agreement with the findings of Commissioner (Appeals) as recorded in paras 7.4 and 7.5 of the OIA. It is further observed that pursuant to the impugned OIA, the gold was released to the Respondent-2 and nothing has been brought on record to indicate that the Development Commissioner, SEZ initiated any action against them for alleged contraventions.

5.3 In view of the above, the Government does not find any infirmity in the OIA impugned herein.

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

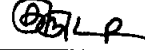
The Pr. Commissioner of Customs,
Chennai-I(Airport)
New Custom House, Meenambakkam
Chennai-600027

Order No. 390/22-Cus dated 20-12-2022

Copy to:

1. Sh. Abhishek Betala, 43, Swamipalli Street, Purasawakkam, Chennai-600007.
2. M/s. Prakash Gold Palace Pvt. Ltd., MEPZ, SEZ, Tambaram, Chennai-6000045.
3. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



20.12.22

(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