

SPEED POST



F. Nos. 375/39-42/B/2020-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...16/02/22

Order No. 47-50/22-Cus dated 16-02-2022 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 129DD of the Customs Act 1962 against the Order-in-Appeal No. JNK-EXCUS-APP-253-256/19-20 dated 31.01.2020, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Jammu.

Applicants:

1. Sh. Gagandeep, Gurdaspur, Punjab.
2. Sh. Munish Kumar, Gurdaspur, Punjab.
3. Sh. Satpal, Gurdaspur, Punjab.
4. Sh. Gurdas Mal, Gurdaspur, Punjab.

Respondent : Commissioner of Customs (Preventive), Amritsar, Punjab.

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ORDER

Four Revision Applications, bearing nos. 375/39-42/B/2020-RA all dated 29.06.2020, have been filed by Sh. Gagandeep, Gurdaspur, Punjab (hereinafter referred to as the Applicant-1), Sh. Munish Kumar, Gurdaspur, Punjab (hereinafter referred to as the Applicant-2), Sh. Satpal, Gurdaspur, Punjab (hereinafter referred to as the Applicant-3), & Sh. Gurdas Mal, Gurdaspur, Punjab (hereinafter referred to as the Applicant-4) against the Order-in-Appeal No. JNK-EXCUS-APP-253-256/19-20 dated 31.01.2020, passed by the Commissioner (Appeals), CGST, Central Excise & Customs, Jammu, vide which the appeal filed by the Applicant against the Order-in-Original No. 04/ASR/CUSTM/PRV/2016 dated 08.01.2016, passed by the Additional Commissioner of Customs (Preventive), Amritsar has been rejected, as time barred.

2. The brief facts of the case are that the Applicant 1 & 2 arrived, on 18.01.2015, at SGRDJI, Amritsar, from Dubai and were intercepted near the exit gate after they had crossed the Customs Green Channel. Detailed examination of their baggage and personal search resulted in the recovery of four (04) rectangular shaped packets wrapped with black plastic tape and carbon paper - two containing 05 gold biscuits recovered from the Applicant -1 and another two containing 08 gold biscuits recovered from the Applicant -2. These packets were concealed in their rectum by the Applicants. The recovered gold, collectively weighing 1430 grams, was totally valued at Rs. 38,61,000/-. The Applicant-1 & 2, in their statements dated 18.01.2015, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of said two (13) gold biscuits, from their possession. They stated that the gold biscuits were purchased by them in Dubai for onward sale in India to earn hefty profits. They further stated that the money to purchase the gold was jointly pooled by all the four Applicants; and that they walked through the Green Channel undetected with an intent to evade payment of Customs Duty as per the directions of Mr. Khushi. The original authority, vide the aforesaid Order dated 08.01.2016, ordered absolute confiscation of the seized gold items, under Section 111(d), 111(l), & 111(m) of the Customs Act, 1962. A penalty of Rs. 5,00,000/- each was imposed

on Applicant -1 & Applicant -2 whereas penalty of Rs. 1 lakh each was imposed on Applicant -3 & Applicant-4, under Section 112(a) of the Act, *ibid*. The appeal filed by the Applicants herein has been rejected, as barred by limitation, *vide* the impugned Order-in-Appeal.

3. The revision applications have been filed, mainly, on the grounds that the copy of OIO dated 08.01.2016 was not received by them; that learning that the case had been decided, they *vide* letter dated 05.11.2018, requested for a copy which was supplied to them by hand on 07.12.2018; that the OIO is stated to have been sent by Speed Post whereas the Speed Post was not a mode of service during the relevant period under the statute; that the respondent department had failed to provide any evidence regarding the delivery of the subject OIO; and that, therefore, the presumption by Commissioner (Appeals) that the OIO had been received is incorrect.

4. Personal hearing, in virtual mode, was held on 11.02.2022. Ms. Kanika Malhotra, Advocate appeared for the Applicants and reiterated the contents of the revision application. None appeared for the Respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5. Revision Applications have been filed with a delay of 09 days, which is attributed to postal delay. Delay is condoned.

6.1 Government has examined the matter carefully. The Applicants have filed the revision applications on two grounds - (i) the Speed Post was not the prescribed mode of delivery during the relevant period and; (ii) the Respondent department had failed to prove that the OIO sent by Speed Post on 08.01.2016 was actually delivered to them.

6.2 In respect of the first contention, it is correctly contended that 'Speed Post' was not specifically prescribed as a mode of service under Section 153 of the Customs Act, 1962 at the relevant time. However, the Government observes that the Hon'ble High Court of Orissa, in the case of *Jay Balaji Jyoti Steels Ltd Vs CESTAT Kolkata {2015 (37) S.T.R. 673 (Ori.)}*, has held that the Post Office issues receipts for both. Hence, both have to be treated as "registered post" in view of Section 28 of the India Post Office Act, 1898 read with Rule 66 B of Indian Post Office Rules, 1933, as inserted vide Gazette Notification dated 24.07.1986. The Hon'ble Court has further held that insertion of "or by speed post with proof of delivery" after words "sending it by registered post with acknowledgement due" in Section 37C(1)(a) of Central Excise Act, 1944 is clarificatory and procedural amendment. Similarly, Hon'ble High Court of Telangana and Andhra Pradesh, in the case of *Shyam Ferro Alloys Ltd vs Assistant CC (APPG), Visakhapatnam {2016 (34) E.L.T. 488 (AP)}*, has held that the expression 'registered post' appearing in Section 153(a) of Customs Act, 1962 has to be construed as including within its purview, the method of registering an article to be taken by 'speed post'. Thus, the Government do not find any merit in the subject contention of the Applicants.

6.3 Other contention of the Applicants is that before it's substitution w.e.f. 29.03.2018, the Section 153 of Customs Act, 1962 placed the onus of proving that any Order had been served, on the department. Government observes that the impugned OIOs were passed by the original authority on 08.01.2016, i.e., much prior to the date, i.e. 29.03.2018, when the provisions of Section 153 were substituted by virtue of Section 99 of the Finance Act, 2018 (13 of 2018). Sub-section (3) of the new Section 153 shifts the onus of proof on the addressee. Thus, the subject contention of the Applicants is correct and it was for the department to prove that the OIO sent by Speed Post on 08.01.2016, had actually been received by the Applicants. Evidence to this effect is not forthcoming in the OIA and the Commissioner (Appeals) has erred in proceeding on the presumption that the Applicants herein "would have received the impugned Order on time and have failed

to file appeal on time." As such, the impugned OIA cannot be sustained on this ground.

6.4 In view of the above, the matter is remanded back to Commissioner (Appeals) to decide the appeals afresh, on merits.

7. Accordingly, the revision application is allowed by way of remand to the Commissioner (Appeals), with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India


1. Sh. Gagandeep,
R/o VPO Bhumbli, P.S. Tibber Tehsil
& District Gurdaspur (Punjab) – 143541.
2. Sh. Munish Kumar,
R/o VPO Bhumbli, P.S. Tibber Tehsil
& District Gurdaspur (Punjab) – 143541.
3. Sh. Satpal,
R/o VPO Bhumbli, P.S. Tibber Tehsil
& District Gurdaspur (Punjab) – 143541.
4. Sh. Gurdas Mal,
R/o VPO Bhumbli, P.S. Tibber Tehsil
& District Gurdaspur (Punjab) – 143541.

Order No. 47-50/22-Cus dated 16-02-2022

Copy to:

1. The Commissioner of Customs (Preventive), Customs House, C.R. Building, The Mall Amritsar (Punjab) – 143001.
2. The Commissioner (Appeals), CGST, Central Excise & Customs, Jammu, OB-32, Rail Head Complex, Bahu Plaza, Jammu - 180012
3. Sh. Sudhir Malhotra, Advocate, 13-R, Hukam Chand Colony, Near D.A.V. College, Jalandhar – 144008.
4. PA to AS(RA).
- ✓ 5. Guard file.
6. Spare Copy.

ATTESTED


(Lakshmi Raghavan)
(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