

'SPEED POST'



F. No. 375/20-21/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. 28/02/22

Order No. 67-68/2022-Cus dated 28-02-2022 of the Government of India passed by Sh. Sandeep Prakash, Principal Commissioner & 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 Orders-in-Appeal Nos. CC(A)CUS/D-I/Airport/406/2019-20 dated 23.10.2019 & CC(A)CUS/D-I/Airport/396/2019-20 dated 22.10.2019 both passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi.

Applicant : 1. Smt. Rukaiya Ammar Moyyadi, Surat.
2. Sh. Saifuddin Shaikh Jafarbai Moyyadi, Surat.

Respondent : The Commissioner of Customs, Airport & General, New Delhi.

ORDER

Two Revision Applications, bearing nos. 375/20-21/B/2020-RA both dated 30.01.2020, have been filed by Smt. Rukaiya Ammar Moyyadi, Surat (hereinafter referred to as the Applicant-1) & Sh. Saifuddin Shaikh Jafarbai Moyyadi, Surat (hereinafter referred to as the Applicant-2) against the Orders-in-Appeal Nos. CC(A)CUS/D-I/Airport/406/2019-20 dated 23.10.2019 & CC(A)CUS/D-I/Airport/396/2019-20 dated 22.10.2019, respectively, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, rejected the appeal filed by the Applicants herein against the Order-in-Original No. 25/Adjn./2018 dated 31.01.2018 on the grounds that pre-deposit, under Section 129E of the Customs Act, 1962, has not been deposited.

2. Briefly stated, both the Applicants, along with the grandson of Applicant-2, arrived from Dubai at IGI Airport, New Delhi, on 12.12.2016. They were intercepted near exit gate of arrival hall after they had crossed the Customs green channel and asked whether they have anything to declare to Customs to which they replied in negative. On search of the baby nest placed in the pram of the grandson of the Applicant-2, 08 pieces of gold bars of 995 purity, totally weighing 8000 grams and valued at Rs. 2,14,30,720/-, were recovered. In their statements tendered under Section 108 of the Customs Act, 1962, the Applicants admitted the recovery of the said gold bars from the pram of the infant they were carrying. The original authority

ordered absolute confiscation of the gold bars under Sections 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962 and a penalty of Rs. 43 Lakhs was imposed on each of the Applicants. Aggrieved, the Applicants filed appeals before Commissioner (Appeals), who, vide the impugned Orders-in-Appeal, has rejected them.

3. The instant revision applications have been filed, mainly, on the grounds that the Commissioner (Appeals) had erred in rejecting their appeals on the technical ground of non-deposit of mandatory pre-deposit amount as the impugned order was passed, *ex-parte*, without granting any personal hearing or raising any deficiency memo. Several averments have been made, on merits, as well.

4. Personal hearing, in virtual mode, was held on 28.02.2022, for both cases. Sh. Sudhir Manchanda, Advocate proxy for Sh. Navneet Panwar, Advocate, appeared for the Applicants. In case of Applicant-1, he submitted that the pre-deposit had been made vide TR 6 Challan No. 2347 dated 27.12.2019. In case of Applicant-2, he submitted that pre-deposit had been made vide TR 6 Challan No. 2348 dated 27.12.2019. Hence, the matter may be remanded to Commissioner (Appeals) for decision on merits. In both the cases, none appeared for the Respondent department nor any request for adjournment has been received. Therefore, the matters are taken up for final disposal based on records.

5. The Government has examined the matter carefully. It is observed that the Commissioner (Appeals) has rejected the appeals on the ground that the Applicants did not make the mandatory pre-deposit, as per Section 129E of the Customs Act, 1962. It is not disputed that being a mandatory condition, the pre-deposit ought to have been made. The Applicants have claimed to have made the requisite pre-deposit after passing of the Orders-in-Appeal, vide challans mentioned above, copies whereof, have been placed on record. Though the pre-deposits have been made after rejection of appeals, it would appear that no opportunity was granted to the Applicants herein for rectification and Orders-in-Appeal were passed, *ex-parte*. Therefore, subject to verification of pre-deposit having been made, it would be in the interest of justice that the matter is remanded to Commissioner (Appeals) with a direction to decide the appeals afresh, on merits.

6. In view of the above, the revision applications are allowed by way of remand to Commissioner (Appeals), with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

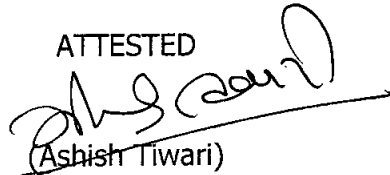
1. Smt. Rukaiya Ammar Moyyadi,
R/o H. No. 4/3376-77, 6E Najmi Apartment,
Zampa Bazar Surat, Gujarat – 395003.
2. Sh. Saifuddin Shaikh Jafarbai Moyaddi,
R/o H. No. 4/3376-77, 6E Najmi Apartment,
Zampa Bazar Surat, Gujarat – 395003.

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Copy to:

1. The Commissioner of Customs, Airport & General, IGI Airport, Terminal-3, New Delhi – 110037.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037.
3. Sh. Sudhir Manchanda, Advocate proxy for Sh. Navneet Panwar, Advocate, Chamber No. 202, Patiala House Court, New Delhi – 110001.
4. PA to AS (RA).
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner(RA)