

SPEED POST



F. No. 372/21/B/2021-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...10/05/22

Order No. 134/22-Cus dated 03-05-2022 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. Kol/Cus(Airport)/AKR/723/2020 dated 19.10.2020 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Mohsin Ismail Khan, Mumbai.

Respondent : The Commissioner of Customs (Airport & Admn.), Kolkata.

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ORDER

A Revision Application No. 372/21/B/2021-RA dated 01.10.2021, has been filed by Sh. Mohsin Ismail Khan, Mumbai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. Kol/Cus(Airport)/AKR/723/2020 dated 19.10.2020, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) vide the above-mentioned Order-in-Appeal has rejected the appeal of the Applicant against the Order-in-Original No. 18/2019-ADC dated 12.02.2019, passed by the Additional Commissioner of Customs, Airport, Kolkata, on the ground that the Applicant did not make the mandatory pre-deposit of 7.5%, as per Section 129(E) of the Customs Act, 1962.

2. The brief facts of the case are that the Applicant arrived on 08.05.2017 at NSCBI Airport from Dubai and was intercepted while he was passing through the Customs Green Channel. The Applicant was diverted for x-ray of his baggage but nothing incriminating was found. However, during the personal search, one gold bar & one cut piece of gold bar, collectively weighing 1501 gms, valued at Rs. 42,77,850/-, were recovered. The gold was found to be wrapped with black adhesive tape and further wrapped with white leucoplast and kept in the pocket of the trouser worn by Applicant. The Applicant, vide his statements dated 08 & 09.05.2017, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of the gold from his possession. He also stated that he had no documents evidencing purchase of the said gold; that the said purchase of gold was financed by his cousin who was working in Dubai; and that he committed this act out of greed and admitted his mistake. The original authority, vide the aforesaid Order-in-Original dated 12.02.2019, confiscated absolutely the seized gold. A penalty of Rs. 20 Lakh was also imposed on the Applicant under Section 112(a) and 112(b) of the Act, *ibid*. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) who rejected the appeal as non-maintainable on the grounds that the Applicant did not make the mandatory pre-deposit.

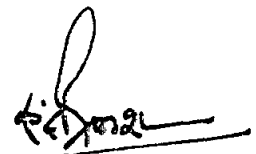
3. The instant revision application has been filed, mainly, on the grounds that gold is not a prohibited item and thus should have been released on payment of nominal redemption fine and penalty along with applicable duty.

4. Personal hearing in the matter was granted on 09.03.2022 & 01.04.2022 and 09.05.2022. None appeared for the Applicant or the Respondent. However, Sh. N. J. Heera, Advocate for the Applicant, vide letter dated 05.05.2022, requested that the hearing be waived and an order may be passed on the basis of written submissions and cited cases.

5. The Government has examined the matter carefully. The Commissioner (Appeals) has rejected the appeal on the ground that the Applicant did not make mandatory pre-deposit of 7.5% required in terms of Section 129(E) of the Customs Act, 1962. It is observed that the instant RA is conspicuously silent on this aspect. There is no averment that the pre-deposit had been made nor is it disputed that being a mandatory condition, the pre-deposit ought to have been made. Thus, there is no infirmity in the impugned Order-in-Appeal.

6. Since the Commissioner (Appeals) could not have entertained the appeal, the question of examining the merits of the case, as pleaded in the instant RA, does not arise.

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



(Sandeep Prakash)

Additional Secretary to the Government of India


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S/o Sh. Ismail Kasam Khan,
R/o Sakkarwala Building, R. N. 19,
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Mumbai-400008, Maharashtra

Order No. 134 /2022-Cus dated 09-05-2022

Copy to:

1. The Commissioner of Customs (Appeals), Custom House 15/1, Strand Road, Kolkata-700 001.
2. The Commissioner of Customs, Kolkata, (Airport & Admn.), Custom House, 15/1, Strand Road, Kolkata-700 001
3. Sh. N. J. Heera, Advocate, Nulwala Building, Ground Floor, 41, Mint Road, Opp. G.P.O., Fort, Mumbai-400001
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED


(लक्ष्मी राघवण)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Revenue)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi.