

SPEED POST



F. No. 375/77/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. 18/5/22
Order No. 144/22-Cus dated 18-05-2022 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 129DD of the Customs Act 1962 against the Order-in-Appeal No. CCA(A)Customs/D-I/AIR/952-953/2019-20 dated 05.03.2020 passed by the Commissioner of Customs (Appeals), NCH, New Delhi

Applicant : Ms. Maral Rejepova & Ms. Gulsat Saparova
C/o Shri P. K. Saxena, Advocate, New Delhi

Respondent : The Commissioner of Customs, IGI Airport, New Delhi.

ORDER

A Revision Application No. 375/77/B/2020-RA dated 28.12.2020 has been filed by Ms. Maral Rejepova & Ms. Gulsat Saparova, Ashgabat, Turkmenistan (hereinafter referred to as the Applicants) through their Authorised Representative Shri P. K. Saxena, Advocate, New Delhi against the Order-in-Appeal Nos. CCA(A)Customs/D-I/AIR/952-953/2019-20 dated 05.03.2020 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has rejected the appeals filed by the Applicants against the Order-in-Original, bearing no. 290/Adj./2018 dated 17.07.2018, passed by the Additional Commissioner of Customs, IGI Airport, New Delhi, wherein 07 cut pieces of gold of different sizes, collectively weighing 600 Gms, recovered from Ms. Maral Rejepova and gold crudely given the shape of two bracelet chain weighing 109 grams & 101, one neck chain weighing 210 grams, totally weighing 420 grams, recovered from Ms. Gulsat Saparova, valued at Rs. 17,00,850/- and Rs. 11,90,595/-, respectively, have been absolutely confiscated and free allowance has been denied to the Applicants. Besides, penalty of Rs. 3,50,000/- was also imposed on the Applicant-1 Ms. Maral Rejepova and Rs. 2,00,000/- on the Applicant-2 Ms. Gulsat Saparova by the original authority, under Section 112 & 114AA of the Customs Act, 1962, which has been maintained in appeal.

2. The brief facts of the case are that both the Applicants arrived, on 30.04.2018, at IGI Airport from Dubai and were intercepted near the exit gate after they had crossed the Customs Green Channel. After their personal and baggage search, in the presence of Panchas and Custom officers, 07 gold cut pieces of different sizes, collectively weighing 600 Gms, valued at Rs. 17,00,850/-, were recovered from the Hand Bag of the Applicant-1, Ms. Maral Rejepova and similarly gold crudely given the shape of two bracelet chains, weighing 109 grams & 101, one neck chain weighing 210 grams, totally weighing 420 grams, valued at Rs. 11,90,595/-, concealed under the clothes worn by the Applicant-2, Ms. Gulsat Saparova, were recovered. During enquiry, both Applicants admitted in their statements dated 30.04.2018 and 02.05.2018, recorded under Section 108 of the Customs Act, 1962 that they were well known to each other and also admitted the

recovery of the subject goods which they brought into India for selling the same and to earn quick money. Both the Applicants requested to take lenient view and also stated that they brought gold for their medical treatment.

3. A common revision application has been filed on behalf of both the Applicants canvassing that no show cause notice was issued in the case; import of gold & golden jewellery is not prohibited under Indian law even for a foreigner; that there is no ban of import of gold/ golden jewellery by a foreign tourist, under any law, and even if there is any restriction, the Applicants have to be allowed to re-export of the seized goods under Section 80 of the Act, *ibid* and, therefore, the same may be released on payment of redemption fine and appropriate duty or allowed to be re-exported.

4. Personal hearing was fixed on 06.04.2022, 11.05.2022 and 13.05.2022. In the hearing held on 13.05.2022, Sh. P. K. Saxena, Advocate, appeared for the Applicants. Upon being asked whether one RA filed by two separate individuals is maintainable, Sh. Saxena submitted that one RA has been filed since there was a common adjudication order and the appeals filed were also disposed of by a common order. He also made written submission on this limited issue on 17.05.2022. On merits, Sh. Saxena reiterated the contents of RA. He requested that the gold may be released on payment of fine & duty. Further they are not smugglers. No one appeared for the Respondent department nor any request for adjournment has been received.

5.1 The Government has carefully examined the matter.

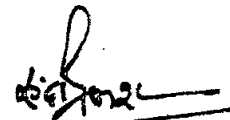
5.2.1 The preliminary issue that arises for consideration is whether one common RA filed by two separate individuals who have been visited with confiscation of different quantities of gold and penalties etc. is maintainable. It is the contention of the Applicants that since the case arose out of same Panchnama proceedings and a common OIO and common OIA have been issued, a common RA is maintainable.

The Government observes that gold pieces, weighing 600 grams were recovered from the Applicant-1, whereas gold jewellery, weighing 420 grams was recovered from the Applicant-2. The penalties imposed are also different. Though, the original authority has decided the case by a common order, two separate appeals were filed on behalf of the Applicants herein and have been decided under two different Order numbers, by the Appellate Authority. Thus, the explanation put forth now for filing a common RA is contrary to the Applicant's own earlier act of filing separate appeals before the Commissioner (Appeals).

5.2.2 Further, the Government observes that as per sub-section (1) of Section 129DD *"(1) The Central Government may, on the application of any person aggrieved by any order passed under Section 128A, where the order passed under Section 128A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 129A, annul or modify such order:"* It is to be noted that the statute uses the words "any person". The usage of prefix "any" before "person" makes it clear that the word "person" cannot be read in plural in the context of Section 129DD. In other words, Section 129DD does not provide for filing of one RA by more than one aggrieved person(s).

5.2.3 In view of the above, the Government holds that one common RA by two separate aggrieved persons is not maintainable.

6. The revision application is rejected for the reasons stated hereinabove.



(Sandeep Prakash)

Additional Secretary to the Government of India

Ms. Maral Rejepova & Ms. Gulsat Saparova
C/o Shri P. K. Saxena, Advocate,
E-347, Greater Kailash, Part-II,
New Delhi-110048

Order No. 144/22-Cus dated 18-05-2022

Copy to:

1. The Commissioner of Customs, IGI Airport, Terminal-3, New Delhi – 110037.
2. The Commissioner of Customs (Appeals), New Customs House, New Delhi-110037.
3. Shri P. K. Saxena, Advocate, E-347, Greater Kailash, Part-II, New Delhi-110048
4. PA to AS(RA)
5. Guard file

ATTESTED

[Handwritten Signature]
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