

SPEED POST



F. No. 380/08/B/NZ/2022-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...10/10/24..

Order No. 209/24-Cus dated 10-10-2024 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)/Customs/D-I/Air/4192/2021-22 dated 17.02.2022, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : The Commissioner of Customs (Airport), New Delhi

Respondent : Sh. Jatinder Kumar, Ludhiana

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ORDER

A Revision Application, bearing No. 380/08/B/NZ/2022-RA dated 14.07.2022, has been filed by the Commissioner of Customs (Airport), New Delhi (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. CC(A)/Customs/D-I/Air/4192/2021-22 dated 17.02.2022, passed by the Commissioner of Customs (Appeals), New Delhi, vide which the Commissioner (Appeals) has allowed the appeal filed by Sh. Jatinder Kumar, Ludhiana (hereinafter referred to as Respondent) against the Order-in-Original No. 353/Adjn./2017 dated 29.12.2017, passed by the Additional Commissioner of Customs (Airport), New Delhi. Vide the aforementioned Order-in-Original, one silver coated gold kada of 24 carat purity, weighing 236 grams and valued at Rs. 6,07,214/- recovered from the Respondent, was held liable for confiscation under Section 111(d), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962, however a redemption fine of Rs. 1,20,000/- was imposed upon the Respondent as the gold kada was already released to the Respondent in compliance of Hon'ble Delhi High Court Order in W.P (C) 1492/2016 dated 08.02.2016. Besides, penalty of Rs. 1,20,000/- was also imposed on the Respondent, under Section 112 of the Act, *ibid*.

2. Brief facts of the case are that Customs Officers intercepted the Respondent upon his arrival at IGI Airport, New Delhi from Dubai, on 11.02.2015 at the exit gate after he had crossed the Customs Green Channel. Upon search a silver-coated gold kada as mentioned above was recovered from him. The Respondent was found to be an ineligible passenger in terms of Notification No. 12/2012-Cus dated 17.03.2012. For his acts of commission and omission, a Show Cause Notice was issued to him on 16.01.2017 proposing confiscation of seized gold under Section 111 of the Customs Act, 1962 and penal action under Section 112 of the Act, *ibid*. Meanwhile the Respondent had filed a Writ Petition in the Hon'ble Delhi High Court which, vide order W.P (C) 1492/2016 dated 08.02.2016 had allowed release of the gold Kada unconditionally to the Respondent but also clarified that the department was at liberty for taking appropriate action in accordance with law. Accordingly, the Applicant department ordered for release of the gold kada after payment of duty amounting to Rs. 2,18,901/- @ 36.5% on the value of the gold kada vide order No. VIII/WH/828/DR/15-16/23748 dated 22.12.2016.

The matter was adjudicated by the original authority, vide aforesaid Order-in-Original dated 29.12.2017. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), which was allowed.

3. The revision application has been filed by the applicant department mainly on the grounds that the Hon'ble Delhi High Court had held in its order that the department is at liberty to take action as per law that the penalty for the offence committed by the Respondent is warranted in the instant case; that the decision of the Commissioner (Appeals) setting aside the redemption fine and penalty imposed on the smuggled goods is not proper and legal.

4. Personal hearing in the matter was fixed on 17.05.2024, 07.06.2024, 12.07.2024 & 27.09.2024. No one appeared for either side on the said dates except 27.09.2024. In the hearing held on 27.09.2024, Superintendent Air Customs appeared for the Applicant department and submitted that the delay in filing the appeal was due to administrative exigencies related to transfer of staff and prayed for it to be condoned as per their application. On merits, he reiterated the written submissions in the revision application and prayed that the OIA be set aside. No one appeared from the Respondent's side. As such, it is presumed that Respondent has nothing to add in the matter. Hence the matter is being taken up based on the material on record.

5. There has been a delay of 30 days in filing the revision application. The reason cited for delay is administrative exigencies related to transfer of dealing staff that led to the delay in filing of the revision application. The delay is condoned.

6. The Government has examined the matter. It is observed that the applicant arrived on 11.02.2015 and Customs detaining his gold kada and issued a Detention Report. No seizure was made under Section 110 of the Customs Act, 1962. The Show Cause Notice in the matter was issued on 16.01.2017 i.e. after a period of 23 months. Meanwhile, the respondent approached the Hon'ble Delhi High Court which vide order dated 08.02.2016 directed Customs to release the gold kada to the respondent within two weeks.

Accordingly, the gold kada was released to the respondent on payment of duty in compliance of Hon'ble High Court's order.

7. The Government observes that in this case, the Show Cause Notice was issued on 16.01.2017 under Section 28 of the Act i.e. well beyond the stipulated period of one year which renders the same hit by limitation. In view of above, the Government concurs with Commissioner (Appeals)' findings in para 5.3 & 5.4 of his order and holds that the OIA merits no interference.

8. The revision application is accordingly rejected.

Shubhagata Kumar
10/10/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

The Commissioner of Customs (Airport)
T-3, Indira Gandhi International Airport
New Delhi-110037.

Order No. 209/24-Cus dated 10-10-2024

Copy to:

1. Sh. Jatinder Kumar, S/o. Sh. Krishan Lal, R/o H.No. 3842, Sector-32-A, Chandigarh Road, Ludhiana-141010.
2. The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037.
3. PPS to AS(RA)
4. Guard File
- ✓ 5. Spare Copy
6. Notice Board

Shailendra Kumar Meena
10/10/24
ATTESTED
(शैलेंद्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली, भारत