

F. No. 373/390/B/2022-RA

F. No. 373/391/B/2022-RA

F. No. 373/399/B/2022-RA

F. No. 373/400/B/2022-RA

SPEED POST



F. No. 373/390/B/2022-RA
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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..14/10/24...

Order No. 211-214 /24-Cus dated 14-10-2024 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. 484-487/2021 dated 27.10.2021 passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicants : Sh. Muhammed Riyaz, Kozhikode
Sh. Muhammed Safi Vennakkottu Parambath, Kozhikode
Smt. Anagha K. Prakash, Kozhikode
Smt. Shahana Sheri Akkaravazpapurath, Kozhikode

Respondent : Pr. Commissioner of Customs (Airport), Bengaluru

ORDER

Revision Application Nos. 373/390/B/2022-RA dated 08.08.2022, 373/391/B/2022-RA dated 08.08.2022, 373/399/B/2022-RA dated 11.08.2022 & 373/400/B/2022-RA dated 11.08.2022, have been filed by Sh. Muhammed Riyaz, Kozhikode, Sh. Muhammed Safi Vennakkottu Parmbath, Kozhikode, Smt. Anagha K. Prakash, Kozhikode & Smt. Shahana Sheri Akkaravazpapurath, Kozhikode (hereinafter referred to as Applicant-1, Applicant-2, Applicant-3 & Applicant-4), against the Order-in-Appeal No. 484-487/2021 dated 27.10.2021, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has rejected the appeals filed by the applicants against the Order-in-Original, passed by the Joint Commissioner of Customs, Airport, Bengaluru, bearing no. 1095/2021-22 (AP-ADM) dated 09.08.2021. Vide the aforesaid Order-in-Original Crude gold 'Patti' (extracted after melting gold paste) having purity of 23.64 carat/98.50%, weighing 822.040 grams and valued at Rs. 36,22,730/-, recovered from Applicant-3 was confiscated absolutely under Section 111(d), (i), (l) & (m) of the Customs Act, 1962. Besides, penalties of Rs. 9,05,683/- & 4,06,611 each were also imposed on all Applicants under Section 112 & 114AA of the Act *ibid*. Further, penalties of Rs. 1,00,000/- each were also imposed upon one person named Muhammed Anas K. under Section 112 & 114AA of the Act, *ibid*.

2. Brief facts of the case are that acting on specific information that Applicant-2 & 4 would try to smuggle prohibited/dutiable goods without declaring to Customs with the help of ground staff working in Kempegowda International Airport, Customs Officers started monitoring the movements of Applicant-4. Applicant-4 entered the ladies toilet and was followed by lady officers. The lady officers noted that after a few minutes, one lady i.e. Applicant-3 wearing AI SATS uniform rushed inside the toilet area and identified Applicant-4. Thereafter both of them entered two adjacent compartments where Applicant-4 slid some packets towards the lady staff under the open space between the two compartments. After coming out of the toilet, both the ladies were intercepted by the lady Customs officers. Thereafter the Customs officers asked Applicant-4 and Applicant-2 if they were concealing any contraband on their person which was denied by them.

Thereafter upon the search of Applicant-3, one grey coloured rectangular packet was recovered from inside her orange colour jacket upon scanning of her jacket. Upon being questioned about the packet, Applicant-2 informed that it was given to her by Applicant-4 in the ladies toilet and the said packet contained gold in paste form which was to be cleared from the Customs area. Thereafter the gold appraiser took the packet for separating the metal from the chemical. The gross weight of the paste was found to be 1167.00 grams after removing the packing materials and before melting. After the separation of the unknown quantity of metal mixed with unknown materials by melting, the same was made into a yellow metal 'patti' form. On examination it was found to be crude gold with 23.64 carat/98.50% purity, totally weighing 822.40 grams. The value of the said gold was assessed at Rs. 36,22,730/-.

The matter was decided vide the aforesaid Order-in-Original dated 09.08.2021. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which have been rejected as non-maintainable on account of non-payment of mandatory pre-deposit of 7.5% of the penalty amount.

3. The Applicants have filed revision applications mainly on the grounds that the Commissioner (Appeals) had rejected their appeal only on the basis of non payment of pre-deposit of 7.5% of the penalty; that the applicants had already filed petitions for waiver of the same but without being heard the applicant's side the Commissioner (Appeals) dismissed their appeal; and that the time given for depositing the pre-deposit of 7.5% of the penalty was not adequate and sufficient.

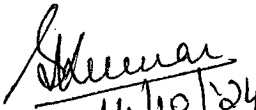
4. Personal hearing was fixed on 13.09.2024 which was adjourned on the request of Sh. Akheel Ahammed, Advocate for the applicant. In the hearing held on 07.10.2024, Ms. Preethimol PT, Advocate submitted that all 4 RAs pertain to the same case and therefore the submissions in the PH may be taken on record for all the RAs. She reiterated the written submissions and stated that the cases are based solely on statements made by the applicants and no evidence was produced by Customs. She stated that the applicants have nothing to do with the gold and the entire matter has been concocted by Customs

authorities. She stated that the applicants were coerced into making the statements and therefore these cannot be relied upon. She quoted case laws in support of her case and sought to send additional submissions via email, pertaining to case laws quoted by her. She prayed that the OIA be set aside.

5. The Government has examined the case. The Commissioner (Appeals) has rejected the appeals on the ground that the applicants did not make the mandatory pre-deposit of 7.5% of duty/penalty as per Section 129(E) of the Customs Act, 1962. This being a mandatory condition the pre-deposit ought to have been made. The applicants' contention that they had filed petitions for waiver of the mandatory pre-deposit is devoid of merit as there is no provision for grant of such waiver. In the circumstances, the request of the applicants for waiver of mandatory pre-deposit is untenable.

6. The Commissioner (Appeals) has not traversed the merits of the case as the condition required under sub-section-1 of Section 129(E) of the Customs Act, 1962 was not met. The use of the word 'shall' in the aforesaid Section makes it amply clear that the condition to deposit the pre-deposit is mandatory and is not optional. However, in the interest of justice, the case is remanded back to Commissioner (Appeals) to consider the case afresh once the applicants have fulfilled all the conditions as per the provisions of the Customs Act, 1962 and decide the matter within three months from the date of fulfilment of the requirements of Section 129E of the Customs Act, 1962 by the Applicants.

7. In view of the above, the case is decided on above terms.


14/10/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

1. Sh. Muhammed Riyaz
Kunnumal House,
Kalandaud Mukkam City
Manasheri P.O Mukkam via Calicut
Kerala-673602.

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2. Sh. Muhammed Shafi Vennakkottu Parambath
Vennakott Parambath House
Neeleshwaram PO, Omassery Via Kozhikode
Kerala-673582.
3. Smt. Anagha K. Prakash
Kolochalil House, Ward No. 2
Malayamma REC NIT, Calicut
Kerala-673601.
4. Smt. Sahaha Sheri Akkaravazhappurath
Akkaravazhapurath House
Parambathkavu Koduvally P.O
Kozhikode, Kerala-673572.

Order No. 211-214 /24-Cus dated 14-10-2024
Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. The Pr. Commissioner of Customs, Airport and Air Cargo Complex, A1 SATS Terminal, Bengaluru-560300.
3. Adv. Akheel Ahammed P., Akheel Associates, Room No. 1, Second Floor, Old Abad Building, Opp. District & Sessions Court, Kozhikode-673001.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

Shailendra
14/10/24
ATTESTED
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi