

**SPEED POST**



F. No. 373/87/B/2019-RA  
F. No. 373/88/B/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue 26/9/23

Order No. 223-224/23-Cus dated 26.09.2023 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Applications, filed under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal C. Cus.I No. 86 & 87/2018 dated 27.08.2018, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicants :1. Sh. Nitin Mahesh Kumar Valecha, Ulhasnagar  
2. Smt. Bharti P. Sharma, Ulhasnagar

Respondent : Pr. Commissioner of Customs, Chennai-I

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**ORDER**

Revision Applications, bearing Nos. 373/87/B/2019-RA & 373/88/B/2019-RA both dated 08.04.2019, have been filed by Sh. Nitin Mahesh Kumar Valecha, Ulhasnagar & Smt. Bharti P. Sharma, Ulhasnagar (hereinafter referred to as the Applicant-1 & Applicant-2, respectively), against the Order-in-Appeal No. 86 & 87/2018 dated 27.08.2018, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Joint Commissioner of Customs (Adjudication-Air), Chennai bearing no. 230/2017-18-Airport dated 23.02.2018, ordering absolute confiscation of 06 nos of foreign marked gold bars, totally weighing 1205.600 grams and collectively valued at Rs. 34,45,605/- recovered from Applicant-1 under Sections 111(d) & (l) of the Customs Act, 1962. Besides, penalties of Rs. 3,50,000/- each were imposed on both the Applicants along with different penalties on 04 other persons, under Section 112 of the Act *ibid*.

2. Brief facts of the case are that officers of the Directorate of Revenue Intelligence (DRI), Chennai Zonal Unit, based on a specific information, intercepted both the Applicants, on 05.05.2017, when they started exiting the Customs area, upon their arrival at Anna International Airport, Chennai. On enquiry, as to whether they were carrying gold with them in their person or hand baggage or checked in baggage, both of them replied in the negative. However, on repeated enquiry, Applicant-2 admitted that she had concealed in her rectum three packets containing gold given to her by Applicant-1. On being asked by the officers Applicant-1 also accepted that he had given three packets containing gold to Applicant-2, for clearing the same by avoiding Customs check, taking advantage of her being a domestic passenger. Upon examination of the 03 packets, the officers found each packet containing two cut pieces of gold bars with foreign markings, thus total 06 cut pieces of gold bars with foreign markings were recovered. The Government approved Assayer assayed the aforesaid gold bars and certified that the said gold bars were of 24 carat purity, totally weighing 1205.6 grams and collectively valued at Rs. 34,45,605/-. Upon being enquired as to whether they had any valid documents for licit possession of the said 06 cut pieces of gold bars of foreign origin, both replied in negative. Applicant-1 & 2, in their statements dated 05.05.2017, recorded under Section 108 of the Customs Act,

1962, inter-alia, admitted their role in the smuggling of the subject goods to earn profit. The case was adjudicated by the original authority, vide aforementioned Order-in-Original dated 23.02.2018. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which were rejected as mentioned above.

3. The revision application has been filed by Applicant-1, mainly, on the grounds that there is no recovery of any material to connect him with the gold seized from Applicant-2; that if he is the owner of the gold then the gold should be released or allowed to be redeemed the gold to him under Section 125 of the Customs Act; and that penalty should not have been imposed upon him when there was no recovery from him.

4. The revision application has been filed by Applicant-2, mainly, on the grounds that she was a domestic traveler and there was no need for her to submit any declaration for and she did not import any goods from abroad; that the officers have foisted a fabricated case against her in the matter as 1205 grams of gold is impossible to keep inside the body; and that Section 102 of the Customs Act, 1962 was not followed.

5. A personal hearing in the matter was fixed on 17.08.2023 & 29.08.2023. In the hearing held on 29.08.2023 Sh. A. Ganesh and Sh. Ronak R., Advocates simply sought a lenient view in the matter and reduction in penalty.

6. The Government has carefully examined the matter. The Applicants had mentioned in their revision applications that the date of communication of the Order-in-Appeal is 10.10.2018. The revision applications have been filed on 08.04.2019 i.e. after 2 months and 27 days after the normal period of three months for filing the application. The Government observes that, in both cases, identically worded applications for condonation of delay have been filed and the delay has been sought to be explained in following terms:

" The petitioner submits that her counsel had prepared the revision petition but the petitioner submits that he is unable to sign and file the revision in time due to illness."

Thus, the cause of delay is stated to be ill health of both the Applicants. However, no medical certificates have been placed on record. Hence, the COD applications are unsubstantiated. Further, the Government finds it peculiar and unexplained that both the Applicants fell ill at the same time that too apparently for the same duration. It would, thus, appear that request for condonation of delay have been made in a mechanical and perfunctory manner, without any consideration for the factual position. In the conspectus of these facts and circumstances, the Government is constrained to hold that "sufficient cause" for condonation of delay has not been satisfactorily shown by the applicants, as required under Section 129DD.

Further, as per records, the Order-in-Appeal was despatched on 27.08.2018 by Speed Post. As per the All India Delivery (Transit) Norms for speed post, the speed post article should be delivered within 4-6 days from the date of booking, i.e. in the first week of September, 2018. Further the Applicants herein have not submitted any proof for the date of receipt of the Order-in-Appeal. Section 153 of the Customs Act, 1962, which provides for mode for service of notice, orders, etc., as it stood at the relevant time, read as under:

*"153. Service of order, decision, etc. – Any order or decision passed or any summons or notice issued under this Act, shall be served, -*

- (a) By tendering the order, decision, summons or notice or sending it by registered post to the person for whom it is intended or to his agent; or*
- (b) If the order, decision, summons or notice cannot be served in the manner provided in clause (a), by affixing it on the notice board of the customs house."*

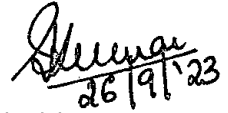
Further, Section 27 of the General Clauses Act, 1897 provides as under:

*"27. Meaning of service by post. – Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."*

Thus, on a combined reading of the two provisions extracted above, it is apparent that the service of the Order is deemed to have been effected at the time at which it would be delivered in the ordinary course of post, unless the contrary is proved. No doubt, in the

present case, the Order was despatched by "speed post" and not by "registered post", and, hence, a plea can be taken that the order was not served in a manner prescribed by law. However, the Government finds that the Hon'ble Orissa High Court has, in the case of Jay Balaji Jyoti Steels Ltd. Vs. CESTAT, Kolkata {2015 (37) STR 673 (Ori.)}, held that "speed post" also has to be treated as "registered post", in view of Section 28 of the Indian Post Office Act, 1898 read with Rule 66B of Indian Post Office Rules, 1933. Hence, it can be safely claimed that the revision applications have been filed much after the condonable period of three months as the date of communication of impugned order has been falsely claimed to be 10.10.2018 i.e. after 45 days of the dispatch of the order through Speed Post. As such, the Government is not persuaded to accept the subject submissions made by the Applicants.

7. The revision applications are, accordingly, rejected as non-maintainable, without traversing the merits of the respective cases.

  
26/9/23

(Shubhagata Kumar)

Additional Secretary to the Government of India

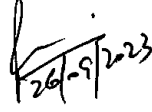
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2. Smt. Bharti P. Sharma  
W/o Sh. Vijayakumar Sharma  
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Jayshankar Hotel, Ulhasnagar  
Mumbai-421002

Order No. 223-224/23-Cus dated 26.09.2023

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3<sup>rd</sup> Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
2. The Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai-600027.
3. Sh. A. Ganesh, Advocate, F Block 179, IV Street, Annanagar, Chennai-600102.

4. PPS to AS(RA).
5. Guard File.
6. ✓ Spare Copy.
7. Notice Board.

  
26-9/2023

ATTESTED

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