

SPEED POST



F. No. 373/178/B/SZ/2020-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 24/10/24

Order No. 223-224/24-Cus dated 24-10-2024 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 Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal HYD-CUS-000-APP-022 & 023-20-21 (APP-I) dated 16.07.2020, passed by the Commissioner of Customs & Central Tax (Appeals), Hyderabad.

Applicant-1 : Shri Sathiyamoorthy Murugan, Ramanathapuram
Applicant-2 : Shri Kalibathullah Mohamed, Chennai

Respondent : The Principal Commissioner of Customs, Hyderabad

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ORDER

Revision Applications, bearing Nos. 373/178/B/SZ/2020-RA and 373/179/B/SZ/2020-RA both dated 07.08.2020 have been filed by Shri Sathiyamoorthy Murugan, Ramanathapuram and Shri Kalibathullah Mohamed, Chennai ((hereinafter referred to as the Applicant-1 & Applicant-2 respectively), against the Order-in-Appeal HYD-CUS-000-APP-022 & 023-20-21 (APP-I) dated 16.07.2020, passed by the Commissioner of Customs & Central Tax (Appeals), Hyderabad. The Commissioner (Appeals) has rejected the appeal filed by the Applicants and upheld the Order-in-Original of the Additional Commissioner of Customs, Hyderabad, bearing No. 118/2019-Adjn.Cus(ADC) dated 14.12.2019.

2. Brief facts of the case are that the officers of Directorate of Revenue Intelligence, Zonal Unit, Hyderabad have gathered specific intelligence that smuggling of gold was being carried out by the above said two passengers Applicant-1 and Applicant-2, arriving by Spicejet Flight No. SG-464 from Guwahati to Hyderabad on 12.12.2018. Both the passengers were intercepted and on being asked by the officers as to whether they were in possession of gold in any form, both the Applicants replied in the negative. For detailed examination, both the Applicants were taken to the Customs Arrival Hall. When the officers again questioned both the Applicants as to whether they were carrying gold in any form, both of them admitted that they have been travelling together and on the request of a person named Jumma Khan, they had retrieved two gold bars (in cuboid shape concealed with silver coating) which were attached by using black coloured adhesive tapes and two way stickers beneath the arm rest situated between the seats numbered 19A and 19B of the Spicejet Flight No. SG-464 in which they had arrived from Guwahati and that the same were available in the hand baggage of Applicant-1. The officers then thoroughly checked the contents of the hand baggage of the Applicant-1 which was a black coloured hand held luggage bag bearing the name "ATTRACTION" and found two silver coloured cuboid bars wrapped in a chequered towel. The Applicant-1 informed the officers that the two silver coloured cuboid bars wrapped in the chequered towel found in his hand baggage were gold bars. On being asked by the officers, both the Applicants informed that the said Jumma Khan was known to them as a casual acquaintance in Chennai and that

he requested both of them to retrieve the gold bars concealed beneath the arm rest situated between the seats numbered 19A and 19B of Spicejet Flight No.SG-464. Both of them further informed that the said gold bars were concealed in the form of two silver coloured cuboid bars beneath the arm rest by an associate of Jumma Khan, while the same aircraft was on its international run from Bangkok to Hyderabad earlier and that they were offered an amount of Rs. 3,000/- each for doing so. Both the Applicants further informed that Jumma Khan had told them that they would be identified and approached by his associate after exiting of the RGIA and that they were to hand over the gold bars to his associate. According to the Government approved valuer, the two cuboid bars were silver coated gold bars and the same were found to be 999 purity (24 carats), each weighing 500 grams and totally weighing 1000 grams. As per the valuation report given by the Government approved valuer, the combined total value of the said two silver coated cuboid gold bars was Rs. 31,68,000/-. Thereafter, the officers seized the impugned gold bars along with the material objects used to conceal the said gold bars. Statements both dated 13.12.2018 of the Applicant-1 and Applicant-2 were recorded under Section 108 of the Customs Act, 1962. Both the Applicants were arrested on 13.12.2018 as they were found to have involved in smuggling the said impugned gold items.

3. Further, the Appellate Authority mentioned that as per the information provided by M/s Spicejet Limited vide their letter dated 06.05.2019 the same aircraft was used as Flight No.SG-464 (Guwahati-Hyderabad) after completing its international run as Flight No.SG-82 from Bangkok to Hyderabad. The two silver coated cuboid gold bars were concealed beneath the armrest between the seats 19A and 19B when the flight was on its international run and the same were not retrieved when the flight landed at Hyderabad, to avoid Customs screening and checks. Subsequently, the same were retrieved during the Aircraft's 5th leg run on the route Guwahati-Hyderabad so that the same could be smuggled into India without examination by the Customs field formations. The same was admitted by both the Applicants in their voluntary statements dated 13.12.2018 recorded under Section 108 of the Customs Act, 1962.

4. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No. 118/2019-Adjn.Cus(ADC) dated 14.12.2019 adjudicated the case by absolutely

confiscating the two silver coated cuboid gold bars of foreign origin valued at Rs. 31,68,000/- under Sections 111(d), 111(i), 111(j) and 111(l) of the Customs Act, 1962 along with material objects used to conceal the impugned gold under Sections 118 and 119 of the Customs Act, 1962. Besides, penalty of Rs. 4,00,000/- and Rs. 5,00,000/- were also imposed on the Applicant-1 and Applicant-2 respectively under Section 112(a)(i) and Section 112(b)(i) of the Customs Act, 1962 for the above said offences/contraventions. Aggrieved, the Applicants filed appeals before the Commissioner of Customs & Central Tax (Appeals), Hyderabad, which have been rejected. Aggrieved by the O-I-A, the Applicants filed the said Revision Applications.

5. The above revision applications have been filed mainly on the grounds that the order of adjudicating authority is against law, weight of evidence and circumstances and probabilities of the case; that gold is not a prohibited item and according to the liberalized policy; the gold can be released on payment of redemption fine and baggage duty; that no declaration card was provided; that the adjudicating authority ought to have allowed redemption of the seized gold. The prayers are to set aside the impugned Order-in-Appeal, to permit the impugned gold items to be re-exported/released and that the penalties imposed on the Applicants-1 & 2 be reduced.

6. Personal hearing in the matter was fixed on 14.10.2024. Smt. P. Kamalamalar, Advocate appeared on behalf of the Applicant-1 and Applicant-2 and she was informed that the mandatory fees required to accompany the revision applications have been short-paid and needs to be rectified so that the RAs can be taken up for disposal. As per her request, two days time was granted to deposit the same. However, no response has been received in this regard till date. No one appeared on behalf of the Respondent department and also no request for adjournment has been received in the matter. Therefore, it is presumed that the department has nothing to add in the matter.

7. The Government has examined the matter. As per sub-section 3(b) of Section 129DD, *ibid*, a revision application shall be accompanied by a fee of Rs. 1,000/- when the amount of duty and interest demanded, fine or penalty levied by an officer of Customs in the case to which the application relates is more than Rs. 1,00,000/-. The use of word

'shall' in the said sub-section (3) makes it apparent that the requirement of fees is mandatory. It is observed that both the Applicant-1 and Applicant-2 have incorrectly short paid the RA fee even though penalties involved in the subject cases are in excess of Rs. 1,00,000/-. Both the Applicants have, till date, failed to pay the balance amount despite being advised to do so vide letters dated 03.10.2024 and during the personal hearings on 14.10.2024. Therefore, the Government holds that the subject revision applications are not maintainable as these are not accompanied by the requisite fee, as required under Section 129DD(3).

8. Both the revision applications are, accordingly, rejected as non-maintainable, without traversing the merits of the case.

Shubhagata Kumar
24/10/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

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Order No. 223-224/24-Cus dated 24-10-2024

Copy to:

1. The Commissioner of Customs & Central Tax (Appeals), 7th Floor, GST Bhavan, L.B Stadium Road, Basheerbagh, Hyderabad-500 004
2. The Principal Commissioner of Customs, GST Bhavan, L.B Stadium Road, Hyderabad-500 004.
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED

Shailendra Kumar Meena
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अनुभाग अधिकारी / Section Officer
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