

SPEED POST



F. No. 373/331/B/2019-RA
F. No. 380/332/B/2019-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. 14/2/24

Order No. 42-43/24-Cus dated 13.02.2024 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. CAL-EXCUS-000-APP-216 & 217-2019 dated 29.03.2019 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi.

Applicants : Sh. Ramseen Othayoth, Kozhikode
Sh. Fairuos Padipatta Chalil, Kozhikode

Respondent : Commissioner of Customs, Calicut

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ORDER

Revision Application Nos. 373/331/B/2019-RA & 373/332/B/2019 both dated 20.08.2019, have been filed by Sh. Ramseen Othayoth, Kozhikode (hereinafter referred to as the Applicant-1) & Sh. Fairoos Padipatta Chalil, Kozhikode (hereinafter referred to as Applicant-2), against the Order-in-Appeal No. CAL-EXCUS-000-APP-216 & 217-2019 dated 29.03.2019, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi. The Commissioner (Appeals) has upheld the Order-in-Original, passed by the Additional Commissioner of Customs, Calicut, bearing no. 47/2016-17 dated 20.03.2017 except to the extent of setting aside the penalty of Rs. 3,00,000/- imposed upon Applicant-2 under Section 114AA of the Customs Act, 1962. Vide the aforesaid Order-in-Original one gold bar, weighing one Kg and valued at Rs. 25,66,760/- (Tariff Value) and Rs. 28,60,000/- (Market Value), recovered from the Applicant-2 was confiscated absolutely under Section 111(d), (i), (j), (l), (m) and (o) of the Act *ibid*. Besides, penalties of Rs. 3,00,000/- each was imposed on Applicant-2 under Section 112(a)&(b) and 114AA, respectively, of the Act *ibid* and penalty of Rs. 2,50,000/- was imposed on Applicant-1 under Section 112 (a) & (b) of the Act *ibid*.

2. Brief facts of the case are that Customs officers recovered two packets upon information received from Sh. Derin Roy, Assistant Manager (Security) Indigo Airlines that a suspicious object abnormally heavy was found beneath the cushion of seat no. 27F of the Indigo Airlines Flight 6E 89 after the disembarkation of the passengers of that flight on 03.02.2015. In the meantime, the passenger travelling on Seat No. 27F was identified as Applicant-2 who was intercepted at the exit gate of the arrival baggage hall. Upon interrogation, Applicant-2 admitted that he had travelled in seat no. 27F of Indigo Flight from Dubai to Calicut on 03.02.2015 and had placed a packet containing gold under the cushion of the said seat as per the instruction of his cousin brother Ramsi who was doing some business in Dubai for monetary benefit. Thereafter, the Goldsmith, Aswathy House Poyilikau, Kondotty, Malappuram verified and certified the said gold bar to be of 24 carat purity, weighing one Kg. The Customs Declaration filled by Applicant-2 was checked and it was found that he had not declared the gold in his declaration.

In his statement dated 03.02.2015, tendered under Section 108 of Customs Act, 1962, Applicant-2 stated inter-alia that he had been working as a salesman in a supermarket at Karuvanpoyil near Koduvally in Kozhikode for four years; that after that, he decided to go to Dubai for some better job and asked about this to his cousin brother Ramsi who had some business of cosmetics in Dubai; that Ramsi invited him to Dubai and he went to Dubai on 02.04.2014 for the first time and returned on 08.04.2014 as he could not find any job there; that on 02.02.2015, his cousin Ramsi asked him over telephone that whether he was interested in smuggling gold to India and further told that he would get some monetary benefit along with travel expenses; that though Ramsi had not revealed the exact amount of remuneration, he agreed to the proposal because he was in need of money; that as per the direction given by Ramsi, he reached Dubai airport at 02:00 hrs local time on 03.02.2015 and the said Ramsi handed over him an air ticket to Calicut in Indigo Flight and a packet containing gold; that Ramsi had further instructed him to conceal the said packet underneath the cushion of the seat of the flight he travels, before arriving at Kozhikode; that as instructed, he departed from Dubai on the same night and as pre-planned, concealed the said packet containing gold underneath the cushion of the seat no. 27F; that he was not told about the person who would remove the packet from there; that he was well aware of the fact that the packet contained one Kilo gold; that he had no money to pay the duty for the said gold; and that he had no investment in the said gold.

The matter was adjudicated by the original authority vide the aforesaid order dated 20.03.2017. Aggrieved, the Applicants filed appeals before the Commissioner (A) which has been modified as mentioned above.

3. Applicant-1 has filed revision application mainly on the grounds that he is neither involved nor does he have any connection with the alleged offences; that the original authority did not grant him the opportunity of cross examining the witnesses; that statement was taken under coercion; that the impugned gold was not in his possession; and that the amount of penalty imposed is excessive.

4. Applicant-2 has filed revision application mainly on the grounds that he is neither involved nor does he have any connection with the alleged offences; that the original authority did not grant him the opportunity of cross examining the witnesses; that the statement was taken under coercion; that the impugned gold was not in his possession; and that the amount of penalty imposed is excessive.

5. Personal hearing was held on 14.12.2023. Sh. NVM Basheer, Advocate appeared on behalf of the Applicants and submitted that one of the applicants named Fairroos was the passenger who travelled from Dubai to Calicut on Indigo Flight on Seat No. 27F. An hour later, he was intercepted by Customs and informed that 1 Kg of gold in a packet was recovered from underneath the said seat. He submitted that the statements on the basis of which the case was made were extracted forcibly, though not retracted as the applicants are illiterate. He submitted that there is no link or evidence that could establish any connection between applicants and the impugned gold. He also stated that no opportunity was given to his clients to cross examine any witnesses; and that he had stated all this at all stages of the case. Therefore, the case should be decided in favour of his clients who should be exonerated of the offence. He does not seek redemption/re-export of the impugned gold as his clients have no connection to it. They seek only exoneration as they are innocent, as also striking off of the penalty imposed.

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 20.05.2019. The revision applications have been filed on 20.08.2019 i.e. 02 days after the normal period of three months for filing the application. The Government observes that, in both the cases, identically worded applications for condonation of delay have been filed and the delay has been sought to be explained in following terms:

" The revision applicant had informed that the said delay was occurred due to the non-availability of the revision applicant in Kozhikode, Kerala to meet and instruct his counsel, as he was out of station for his employment. The delay occurred due to the said reason only. No latches on the part of the revision applicant."

Thus, the cause of delay is stated to be non-availability of both the Applicants in Kozhikode, Kerala for identical reasons and without any documentary evidence. Hence, the COD applications are unsubstantiated. It is thus quite singular that both the Applicants were non-available in Kozhikode at exactly the same time for the same reason and that too apparently for the same duration which stretches credibility. It would thus appear that the request for condonation of delay has 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 the applicants have been unable to show "sufficient cause" as required under Section 129DD of the Customs Act, 1962. The revision application is thus rejected on grounds of limitation without traversing the merits of the case.

Shubhagata Kumar
13/2/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

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2. Sh. Fairoos Padipatta Chalil
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Order No. 42-43/24-Cus dated 13.02.2024

Copy to:

1. The Commissioner of Central Tax, Central Excise & Customs (Appeals), I.S Press Road, Kochi-682018.
2. The Commissioner of Customs (Preventive), Cochin, 5th Floor, Catholic Centre, Broadway, Cochin-682031.
3. Sh. Muhammed Basheer N.V, NVM Legal, Modern Bazaar, Koduvally, Calicut-673572.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED

Sarabjeet Singh
13/2/24

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