



F. No. 375/41/B/NZ/2023-RA

F. No. 375/42/B/NZ/2023-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. 20/03/25

Order No. 24-25 /25-Cus dated 20-03-2025 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 129DD of the Customs Act, 1962, against the Order-in-Appeal No. CC(A)Customs/D-I/Air/14-16/2022-23 dated 28.04.2022, passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi.

Applicants : Shri Suneet Kalra, Delhi
Shri Rajinder Kalra, Delhi

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

ORDER

Two Revision Applications, bearing Nos. 375/41/B/NZ/2023-RA and 375/41/B/NZ/2023-RA both dated 02.03.2023, have been filed by Shri Suneet Kalra, Delhi and Shri Rajinder Kalra, Delhi respectively (hereinafter referred to as the Applicant-1, and Applicant-2 respectively) against the Order-in-Appeal No. CC(A)Customs/D-I/Air/14-16/2022-23 dated 28.04.2022, passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi. The Commissioner (Appeals) has upheld the Order-in-Original of the Joint Commissioner of Customs, IGI Airport, T-3, New Delhi, bearing no. 302/AS/JC/2018 dated 27.07.2018.

2.1 Brief facts of the case are that on 30.08.2017, Applicants-1 & 2 arrived at T-3, IGI Airport, New Delhi by Flight No. EK 516 from Dubai and were intercepted near the exit gate after they had crossed the Customs green channel and diverted for detailed examination. During personal & Baggage search of the Applicants, following items were recovered.

Applicant No.	Description of goods	Place where the gold was recovered	Weight in grams
Applicant-1	One white crude piece given shape of buckle of belt, one white piece crudely given shape of Kada and one yellow metal given crudely shape of chain	All worn by the Applicant	840 gms
Applicant-2	One white crude piece given shape of buckle of belt, one white piece crudely given shape of Kada and one yellow metal given crudely shape of chain	All worn by the Applicant	860 gms
Total			1700 gms

2.2 The recovered items were appraised by the jewellery appraiser to be made of gold of 995 purity, weighing 1700 grams and valued at Rs. 46,29,560/-. The same were seized under Section 110 of the Customs Act, 1962.

2.3 The Applicants-1 & 2 in their respective and voluntary statements dated 30.08.2017 recorded under Section 108 of the Customs Act, 1962 admitted the recovery of above said impugned gold items wherein kada and chain were worn by them and belt buckle fitted in leather belt was also worn by them; that they did not have any documentary evidence for purchase of impugned gold; that the recovered gold was purchased by both the Applicants jointly for about 244000 UAE Dirhams; that the UAE Dirhams used for purchase of gold was carried by them at the time of departure; that the said foreign currency was purchased from M/s Jyoti Money Exchange (P) Ltd.; that the foreign currency was purchased from the cash sale; that they deliberately did not declare gold with intent to evade Customs duty; that they admitted their mistake of commission and omission; that they were ready to pay fine and penalty as imposed.

2.4 The Applicant-1 in his voluntary statement dated 31.08.2017 recorded under Section 108 of the Customs Act, 1962 reiterated the statement of 30.08.2017 and further stated that Sh. Gurpreet Singh (the third Noticee in the O-I-O) used to provide him foreign currency at his residence, whenever required. The Applicant-2 in his statement dated 31.08.2017 stated that he was engaged in business of trading of ladies suits and had an annual income of about Rs. 25 lacs. In response to the summons dated 12.12.2017, both the Applicants submitted separate letters stating that they could not submit legal documents in respect of purchase of gold, as the seized gold was their ancestral property.

2.5 On the basis of statements of Applicants-1 & 2, search was conducted at the office of Sh. Gurpreet Singh on 30.08.2017 wherein foreign currency worth Rs. 16,11,666/- was detained. Sh. Gurpreet Singh in his statement dated 30.08.2017 recorded under Section 108 of the Customs Act, 1962 stated that he did not know both the Applicants-1 & 2 and had not received any calls from them. However, from the call records, it was observed that Applicants-1 & 2 were in touch with Sh. Gurpreet Singh.

3. After due process of adjudication, the Adjudicating Authority, vide impugned order, ordered for (i) absolute confiscation of gold weighing 840 gms and valued at Rs. 22,87,547/- seized from the Applicant-1's possession under Sections 111(d), 111(i),

111(j), 111(l), 111(m) & 111(o) of the Customs Act, 1962; (ii) absolute confiscation of gold weighing 860 gms and valued at Rs. 23,42,013/- seized from Applicant-2's possession under Sections 111(d), 111(i), 111(j), 111(l), 111(m) & 111(o) of the Customs Act, 1962; (iii) recovery of Customs duty @ 36.05% from Applicant-1 upon 1500 gms gold valued at Rs. 40,84,907/- alongwith interest under Section 28 and 28AA of the Customs Act, 1962; (iv) imposition of penalty of Rs. 24,30,000/- on Applicant-1 and Rs. 9,56,500/- on Applicant-2 under Section 112 and 114AA of the Customs Act, 1962 and (v) penalty of Rs. 5,00,000/- under Section 114 & 114AA of the Customs Act, 1962 readwith Section 13 of the Foreign Exchange Management Act, 1999 was imposed upon Sh. Gurpreet Singh. The Adjudicating Authority also ordered for absolute confiscation of material i.e. the belt straps used to conceal the seized goods by Applicants-1 & 2 under Section 118 and Section 119 of the Customs Act, 1962.

4. Aggrieved, the Applicants-1 & 2 filed appeals before the Commissioner of Customs (Appeals), New Customs House, New Delhi who rejected the appeals. Aggrieved by the O-I-A, the Applicants-1 & 2 have filed these Revision Applications.

5. The above Revision Applications have been filed by the Applicants-1 & 2 mainly on the grounds that the order of appellate authority is against facts, unjust and unfair, therefore liable to be set-aside; the order has been passed without considering the written submissions of the Applicants in proper perspective; that the appellate authority failed to take into consideration Section 125 of the Customs Act, 1962 according to which redemption of non-prohibited goods is mandatory, while in relation to release of prohibited goods, the discretion lies with the Adjudicating Authority. The prayer is to set aside/ modify the impugned O-I-A and/or to pass such other or further orders, as deem fit.

6. Personal hearings in the matter were fixed on 18.09.2024, but no one appeared either the Applicants' or respondents. The applicants sought an adjournment on account of non-availability of their advocate due to appearance before Hon'ble Delhi High Court. The next personal hearing was fixed on 09.10.2024 and Sh. Parmanand, Superintendent and Sh. Namit Vats, Inspector appeared on behalf of the Respondent department. Sh. Parmanand stated that the applicants have brought gold in violation of the applicable

provisions; that the O-I-A is proper and should be upheld. No one appeared from applicants' side. Another opportunity of personal hearing was given on 10.03.2025, but no one appeared for the applicants. Sh. Parmanand, Superintendent appeared from respondents side and reiterated the submission made during earlier personal hearing. Since, sufficient opportunities have been granted, the matter is taken up for decision based on available records.

7.1 The Government observes that the applicants have claimed that they both received the impugned Order-in-Appeal dated 28.04.2022 on the same date i.e. on 24.09.2022 and that the revision applications have been filed on 02.03.2023 without adducing any evidence for the receipt of the said OIO after a lapse of more than 5 months from the date of issue of the same. In this regard, it has been ascertained from the office of Commissioner (Appeals) that impugned O-I-A was dispatched through Speed Post on 12.05.2022 vide Speed Post No. ED878113965IN and ED878113996IN to both the Applicants. In this context, it is noteworthy that as per the EMS Speed Post/Domestic – service standards for Delivery of Speed Post (from Booking to Delivery), a speed post article for Local is usually delivered within 1-2 days (average time taken) from the date of booking and maximum of 5 days over the rest of the country. Section 153 of the Customs Act, 1962, which provides for mode for service of notice, orders, etc., as it stood at the relevant time, reads 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."

7.2 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. As regards the use of Speed Post, 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. In this case, it can be safely presumed that the Order-in-Appeal was served on the Applicant herein, within a week of date of dispatch, in May, 2022 by speed post and it cannot be faulted unless the Applicant proves to the contrary. The Applicants have claimed that they received the O-I-A on 24.09.2022 which is (approx.) more than 5 months from the date of dispatch, without any documentary evidence/submission to establish such delay which is far in excess of the time taken for a normal course of delivery of a Speed Post. Even if, for the sake of argument, it is assumed that the order was received with a delay of 5 months on 24.09.2022, the revision applications ought to have been filed within 3 months from such date, which is not the case. Therefore, the contentions of the Applicants that the date of receipt of O-I-A i.e. on 24.09.2022 are without merit and cannot be accepted.

8. As per sub-section (2) of the Section 129DD of the Customs Act, 1962, an application under sub-section (1), i.e., revision application can be made within 3 months from the date of communication of the order against which the application is being made. However, proviso to said sub-section (2) provides discretion to the Government to allow an application to be presented within a further period of 3 months if the Government is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the normal period of 3 months. The date of dispatch as ascertained from Commissioner (Appeals) was 12.05.2022 and the applicants have filed their revision applications well beyond the prescribed time limit. The date of filing the revision applications is 02.03.2023, which is beyond the statutorily provided period under section 129DD of the Customs Act and cannot be condoned. Therefore, the said revision applications are rejected under Section 129DD of the Customs Act, 1962 on grounds of limitation without traversing the merits of the case.

9. In view of the above, the revision applications are rejected.

Shubhagata
20/03/2025

(Shubhagata Kumar)

Additional Secretary to the Government of India

1. Shri Suneet Kalra,
S/o Shri Rajinder Kalra,
R/o GC-14/5, Shivaji Enclave,
Delhi-110 027

2. Shri Rajinder Kalra,
S/o Shri Parmanand Kalra,
R/o GC-14/5, Shivaji Enclave,
Delhi-110 027

Order No. 24-25/25-Cus dated 20-03-2025

Copy to:

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