

REGISTERED
SPEED POST



F.No. 372/³⁰39/B/2018-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: 06/01/2021

Order No. 02/21-Cus dated 05-01-2021 of the Government of India passed by Shri Sandeep Prakash, Principal Commissioner & 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. KOL/CUS (Airport)/AA/523/2018 dated 05/03/2018 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Mr. Rameshwar Tiwari, Howrah.

Respondent : Commissioner of Customs (Airport), Kolkata.

ORDER

A Revision Application No. 372/30/B/2018-RA dated 07.05.18 is filed by Shri Rameshwar Tiwari, Howrah (hereinafter referred to as the applicant) against the Order in Appeal No. KOL/CUS (Airport)/AA/523/2018 dated 05/03/2018 passed by the Commissioner of Customs (Appeals), Kolkata whereby the applicant's appeal against Order-in-Original No. 19/2017 ADC dated 23/02/2017 has been rejected both on merits as well as limitation.

2. Brief facts leading to the present case are that the applicant was apprehended at Kolkata airport as he arrived from Bangkok. On examination of his hand baggage, two medicine sachets of "LASINA" brand were found which on opening contained 3204 grams (approx.) of 24 carat gold valued at Rs. 88,42,764/-. The original adjudicating authority confiscated the gold absolutely and imposed a penalty of Rs. 10 lakhs on the applicant under Section 112(a) and 112(b) of Customs Act, 1962. Being aggrieved, the applicant filed an appeal before Commissioner (Appeals) who upheld the Order-in-Original.

3. The instant revision application is filed mainly on the ground that the penalty imposed by the Commissioner (Appeals) should be reduced to a reasonable amount.

4. Personal hearing was granted on 04.01.2021 in virtual mode. Sh. Barinder Singh, representing the applicant, attended the hearing. On being asked about the time limitation issue, he stated that CESTAT has held in the case of M/s Vishnu Wardhan Paper Mills (P) Ltd [2001(137) ELT (1350)] that in absence of proof of service the appeal filed within 3 months of obtaining Xerox copy should be accepted. On merits, Sh. Barinder Singh reiterated the submissions made in the revision application and the written submission dated 04/01/2021. Upon being asked, Sh. Singh stated that the statement dated 07/01/2015 recorded under Section 108 of Customs Act, 1962 was not immediately retracted; however the statement being

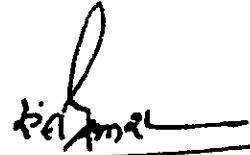
contrary to material evidence is not admissible. He highlighted that Commissioner (Appeals) has upheld an order which is self-contradictory. No one attended the hearing for respondent and no request for adjournment has been received. Therefore, the matter is taken up for decision on the basis of facts and records available.

5. On examination of the revision application, Commissioner (Appeals)'s order and the submissions of the Consultant on behalf of the applicant, it is observed that that the applicant's appeal was dismissed both on limitation as well as merits. Since the appeal has been decided on merits as well, the Government considers it appropriate to deal with the instant revision application on its merits itself.

6. The applicant has no objection to absolute confiscation of the gold but has challenged the imposition of penalty on him on the ground that he was not in conscious possession of gold; that his statement recorded under Section 108 of Customs Act, 1962 cannot be relied upon as it is contrary to facts; and that the orders of authorities below are contradictory in as much as they hold that the applicant attempted to pass through Green Channel whereas an Indian Customs Declaration was recovered from him which is the case when the passengers opt for Red Channel. The Government observes that gold worth Rs. 88, 42,764/- weighing 3.204 Kgs was attempted to be smuggled into India, concealed in medicine sachets. The weight of contraband and nature of concealment is such that any reasonable person would verify the contents of package in case the actual contents are not known to him. Hence, the defence of non-conscious possession does not appear acceptable. Further, the statement of the applicant is recorded in his own handwriting and was admittedly not retracted immediately. The veracity of this statement is sought to be challenged only on the ground that it is contradictory to material facts in as much as in the statement the applicant has admitted to passing through Green Channel whereas Indian Customs Declaration was seized from him which is to be filed only when the passenger opts for Red Channel. However, it is observed that the subject seizure was made under Panchnama proceedings dated

07/01/2015 where also it is recorded in the presence of independent witnesses that the applicant opted for Green Channel. It is also recorded therein that the applicant had not declared the total value of the dutiable goods imported by him. These Panchnama proceedings have not been disputed. Thus, the statement of the applicant is corroborated by the evidence of independent witnesses. As such, the contention of applicant on this count is also not acceptable. The penalty of Rs. 10 lakhs imposed on the applicant appears to be just and proper considering the gravity of his offence and the ingenious method of concealment adopted by him. Hence, the Government does not consider it fit to interfere with the order of Commissioner (Appeals).

7. The revision application is, therefore, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Shri Rameshwar Tiwari, S/o Sh. Fanis Tiwari,
24, Sanatan Mistri Lane, Post Salkia, Howrah-711106

Order No. 02/21-Cus dated 05-01-2021

Copy to:

1. Commissioner of Customs (Airport), Kolkata.
2. Commissioner of Customs (Appeals), Kolkata.
3. Shri Barinder Singh, Consultant, 14, Hare Street, 1st Floor, Room No. 9, Kolkata-700001.
4. PA to AS(RA)
5. Guard File.

6 Spare Copy

ATTESTED

(ASHISH TIWARI)

ASSISTANT COMMISSIONER(RA)