

F.No.375/60/B/2016-RA

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F.No.375/60/B/2016-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 14/9/18

Order No. 160/18-Cus dated 11-9-2018 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Air/281-283/2016 dated 17.5.2016, passed by the Commissioner of Customs (Appeals), NCH, Delhi

Applicant : Shri Jitender Singh, Shastri Nagar, Delhi

Respondent : Commissioner of Customs, IGI Airport, New Delhi

**ORDER**

A Revision Application F.No.375/60/B/2016-R.A. dated 31.08.2016 has been filed by Shri Jitender Singh, R/o H.No. 69-A, New Lahore Shastri Nagar, Delhi-110031 (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/281-283/2016 dated 17.05.2016, passed by the Commissioner of Customs (Appeals), NCH, New Delhi, whereby the applicant's appeal is partly allowed to the extent the penalty on the applicant was reduced from Rs.10 lakhs to Rs.5 lakhs. The revision application is filed mainly on the ground that the penalty on the applicant has been wrongly upheld in Order in Appeal even when he did not do any act or omission in regard to illegal importation of gold. It is also pleaded that his case is not covered under section 114AA of the Customs Act and, therefore, penalty is wrongly imposed on him under this Section.

2. A personal hearing was fixed on 11.07.18 and thereafter it was scheduled on 13.08.18 on the request of the applicant, which was availed by Sh. Jitender Singh himself who reiterated the grounds of revision already pleaded in their application. He specially asserted that he was not aware about the gold hidden in the TV Stand and his mistake was only that he had brought LED TV for a small greed of Rs.5,000/- offered to him by a person in Thailand for carrying it to Delhi and the penalty may be reduced considering this small offence for the first time. But no one appeared for the respondent and no request for any other date of hearing is also made by them from which it is implied that they are not interested in availing personal hearing. Hence, this case is taken up for decision on the basis of revision application and other case records.

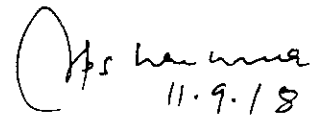
3. From the revision application it is evident that the applicant does not deny his role with regard to illegal import of Samsung TV, but has vehemently asserted that he was not aware about the gold bars hidden in the TV Stand when it was brought by him from Thailand to India for an amount of Rs.5000/- to be given by the person at the Delhi Airport after delivery of the TV to him. Accordingly, the applicant has prayed that penalty of Rs.5 lakhs which was reduced by the Commissioner (Appeal) from the original penalty of Rs.10 lakhs is too harsh and should be reduced by considering his

involvement in the illicit importation of TV only. Whereas the Government finds that the penalty of Rs.10 lakhs/5 lakhs are imposed by the lower authorities by assuming that the applicant was fully aware regarding hiding of gold bars in the TV stands and thus the applicant was directly involved in the smuggling of all goods, including gold bars. However after detailed examination of all the facts narrated in the Order in Original and the Order in Appeal, it clearly emerges that there is no evidence in this case to establish that the applicant was aware about the secretion of gold bars in the TV stand. This fact was narrated in his first encounter with the Customs Officers at the Delhi Airport and the same was repeated subsequently by the applicant in his statements given before the Customs Officers. Even Mr.Pramod Saini the brother of Mr.Parveen based in Bangkok, who was to receive the TV from the applicant and pay Rs.5000/- for bringing the TV in India, has not stated anywhere in his several statements that the applicant was having any knowledge regarding secretion of gold bars in the TV stands. On the contrary Mr.Pramod Saini categorically stated that neither the applicant nor he knew each other and he was only knowing about the gold bars secretly placed in the TV stand which he intended to sell subsequently after receiving TV. The fact that the applicant was not aware about the gold bars hidden in the TV stand is further corroborated by several facts such as the gold bars were never owned by the applicant on being recovered by the Customs Officers, Mr.Pramod Saini has only claimed release of gold bars on payment of Redemption Fine etc. in his revision application filed against the above stated Order in Appeal and the applicant in his present revision application has not claimed any such redemption of confiscated gold bars. Further even consideration of Rs.5000/- offered to the applicant for carrying goods from Thailand also clearly indicates that applicant was not knowing anything about secretion of gold bars in the TV stand. Had the applicant been aware that gold bars of Rs.51,06,360/- were hidden in the TV stand, the applicant would have probably either refused to carry the said TV along with him or would have charged higher amount for carrying so much gold in India. Considering the above facts, the applicant's main fault is apparently that he agreed to carry the TV along with him out of his greed to earn extra Rs.5000/- to meet his expenses incurred towards visiting Thailand and this weakness was cleverly

used by Mr.Parveen in Bangkok to dupe the applicant to believe that he was to carry the TV only along with him for Rs.5000/- which could be covered in the baggage free allowance. The department's case is also not that the applicant is a frequent flier or a repeated offender and no concrete evidence is adduced that the applicant was knowingly or consciously involved in the smuggling of gold. Taking all these relevant facts into account, the Government considers it appropriate that the applicant should be held accountable only for carrying TV in India and not for illicit importation of gold bars by hiding in the TV stand which was known to Mr.Parveen in Thailand and Mr.Pramod Saini in India only and not the applicant.

4. Government also agrees with the applicant's plea that penalty under Sec 11AA of Customs Act, 1962 is also not maintainable in this case as the Section is attracted only where false declaration/statement document is used. But no such false declaration etc. was made by the applicant and rather the case against the applicant is that he did not declare the TV to the Customs authorities for which Section 112 is appropriately attracted. Therefore, the justice and fairness demands that penalty of Rs.25,000/- will be sufficient under Section 112 of the Customs Act on the applicant in this case for carrying the TV for ulterior design of smuggling of TV for monetary consideration.

5. Accordingly, the Order in Appeal is modified and the revision application is allowed to the above extent.

  
11.9.18

(R.P.Sharma)

Additional Secretary to the Government of India

Shri Jitender Singh.  
R/o H.No.69, New Lahore Shastri Nagar,  
Delhi-110031

Order No. 160/18-Cus dated 11-9-2018

Copy to:

1. Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi-110037
3. Additional Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

(Ashish Tiwari)  
Assistant Commissioner

*Ashish Tiwari*  
11/9/18

(निर्मला देवी / NIRMALA DEVI)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance / Deptt. of Rev.  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi