

REGISTERED

SPEED POST



F.No. 375/ 83/B/2016- 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 9/10/18

Order No. 200/2018-Cus dated 9-10-18 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 CUSTOMS 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/ 611/ 2016 dated 29.06.2016, passed by the Commissioner of Customs (Appeals), NCH, Delhi.

Applicant : Mr. Hardesh Kumar Arora @Pinki.

Respondent : Commissioner of Customs, NCH, New Delhi.

ORDER

A Revision Application F.No. 375/ 83/ B/ 2016- RA dated 17.10.2016 has been filed by Mr. Hardesh Kumar Arora @Pinki (hereinafter referred to as the applicant) against the Commissioner (Appeals)'s Order No CC(A) Cus/ D-I/ Air/ 611/ 2016 dated 29.06.2016 whereby the order of the Additional Commissioner of Customs, IGI Airport, T-3, New Delhi confiscating absolutely gold bar weighing 1500 grams valued at Rs. 45,18,952/- and imposing penalty of Rs. 7 lakhs each on the applicant and Ms Ekta Chadha, who was carrying the smuggled goods on behalf of the applicant, has been upheld.

2. The applicant has filed the Revision Application mainly on the ground that the penalty on him is not supported by Section 112 or 114AA of the Customs Act and the same, therefore, needs to be set aside.

3. Personal Hearing was held in this case on 08.08.2018 and it was availed by Mohd Faraz Anees, Advocate, who reiterated the above-mentioned grounds of revision. However, no one appeared for the respondent and no request for any other date of hearing was also received from which it is implied that the respondent is not interested in availing this hearing.

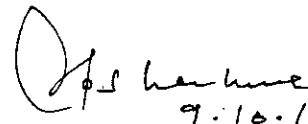
4. From the revision application it is evident that the applicant does not dispute the Commissioner (Appeals)'s order regarding confiscation of the goods which was brought by Ms Ekta Chadha illegally from Dubai in violation of Customs Act, 1962 and the Foreign Trade (Development and Regulation) Act, 1992 and his request is limited to a point that the penalty on him is not

supported by Section 112 or 114AA of the Customs Act and the same, therefore, needs to be set aside.

5. However, the Government is not impressed by the above argument as the involvement of the applicant in the smuggling activities of Ms Ekta Chadha on 31.08.2013 is well established on the basis of several evidences such as he had reached the International Airport on 31.08.2013 to receive the gold bar from Ms Ekta Chadha, she clearly named the applicant as the real person for whom she had brought gold bar on commission basis, she had also given his contact no. and on calling him on the said no. only he was nabbed by the customs officers, she identified him for whom she had worked, he was already in the business of bullion trade, he had travelled with Ms Ekta Chadha earlier to Dubai in July 2013, he had organized the travel plan of Ms Ekta Chadha on 28.08.2013 also and as per his own admission in his Statement dated 01.09.2013^{and} he was fully aware about the arrival of Ms Ekta Chadha with 1500 gm gold bar. Thus, he undoubtedly actively abetted the smuggling activities alongwith Ms Chadha and others and directly concerned himself in carrying the gold bar illegally from Dubai to Delhi, which he knew that these are liable to confiscation under Section 111. Consequently, his case is fully covered under Section 112 (a) & (b) of the Customs Act and accordingly personal penalty is rightly imposed on the applicant. But the Government agrees with the applicant's contention that penalty under Section 114AA is not imposable on him as Section 114AA can be invoked only when a person resorted to

some false declaration/statement/document in the transaction of any business which was not used in the present case at all. On the contrary department's case is that Ms Chadha worked on behalf of the applicant and the applicant did not submit any declaration or any documents with regard to smuggled goods. Since penalty of Rs. 7 lakhs was imposed collectively under two sections, reasonable reduction in the said penalty amount is warranted when it is found that the penalty under Section 114AA is not attracted in this case. Accordingly, the Government reduces the personal penalty from Rs. 7 lakhs to Rs. 6 lakhs and this penalty should be considered to have been imposed under Section 112 of the Customs Act only.

6. In terms of the above discussion, the order-in-appeal is modified and the Revision Applications is allowed to the above extent.


9.10.18
(R.P.Sharma)

Additional Secretary to the Government of India

Mr Hardesh Kumar Arora @ Pinki.

R/o 21, Gagan Vihar Extn.,

1st floor, Vyasar Nagar, Second Street,

Delhi-110092.

Order No. 200/18-6, dated 9-10-18

Copy to:

1. Commissioner of Customs, NCH, New Delhi.
2. Commissioner of Customs (Appeals), NCH, New Delhi.
3. Additional Commissioner of Customs, IGI Airport, T-3, New Delhi.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy.

ATTESTED


09/10/18
(Ravi Prakash)

OSD (REVISION APPLICATION)