



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 373/110/B/2017-RA / 9223 : Date of Issue 28.07.2022

ORDER NO. 225/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 25.07.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

Applicant : Shri. Ajay Kumar

Respondent : Commissioner of Customs, Cochin International Airport,
Custom House, Nedumbassery, Cochin – Pin : 682009.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
10/2017 dated 28.04.2017 {[DOI : 12.05.2017],
[F.No.C27/C27/10/DRI/2017/AU-CUS]} passed by the
Commissioner of Customs (Appeals), Cochin – 682 009.

ORDER

This revision application has been filed by Shri. Ajay Kumar (herein referred to as the Applicant) against the Order-in-Appeal No. 10/2017 dated 28.04.2017 ([DOI : 12.05.2017], [F.No.C27/C27/10/DRI/2017/AU-CUS]) passed by the Commissioner of Customs (Appeals), Cochin - 682 009.

2. The DRI Officers had on 30.09.2015, intercepted a passenger named Virender Kumar at the exit gate of the arrival hall when he had arrived at the Cochin International Airport from Dubai via Mumbai onboard Air India Flight AI-054/30.09.2015. The said passenger had made a 'nil' declaration in the Customs declaration form filed by him and had walked through the green channel. On being asked about possession of any dutiable or prohibited goods, he had replied in the negative. Simultaneously, the Officers in similar manner had intercepted the applicant and another passenger. Search of the baggage of the passenger named Virender Verma, led to the recovery of 17 nos of gold rod of 24 carat purity, totally weighing 3644.200 gms and valued at Rs. 87,71,935/- . The gold had been melted and converted to rods which had been ingeniously concealed as a part of the door tower bolts with levers and screws fitted thereon. Investigations revealed that the applicant and the other passenger were accomplices of Virender Verma and had travelled as domestic passengers from Mumbai in the same flight and were to assist him in carrying the gold out of the airport. In this case, for some reason Virender Verma was unable to hand over his baggage containing the gold but they admitted to have smuggled gold in similar manner in the past. Said Virender Verma had travelled in Air India AI-984 from Dubai to Mumbai and at Mumbai was transited to AI-054 for onward connection to Cochin. The applicant and another person had boarded flight AI-054 at Mumbai for travel to Cochin as domestic passengers. Investigations revealed that applicant was involved with

Virender Verma and had admitted to his role in the act of smuggling the gold to India.

3. After, due process of law, the Original Adjudicating Authority (OAA) viz, Addl. Commissioner of Customs, Cochin vide Order-In-Original No. 300/2016 dated 09.11.2016, ordered the absolute confiscation of the 17 nos of gold rods, totally weighing 3644.200 gms and valued at Rs. 87,71,935/- (International Value) under Section 111(d), (l) and (m) of the Customs Act 1962 and imposed a penalty of Rs.5,00,000/- on Virender Verma under Section 112(a) of the Customs Act 1962 and also imposed a Penalty of Rs. 3,00,000/- each on the applicant and the other accomplice, under Section 112(b) of the Customs Act 1962.

4. Aggrieved by this Order-In-Original, the applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Cochin – 682 009 who vide his Order-in-Appeal No. 10/2017 dated 28.04.2017 {{DOI : 12.05.2017}, [F.No.C27/C27/10/DRI/2017/AU-CUS]} did not find it necessary to interfere in the Order passed by the OAA.

5. Aggrieved by the above Order-in-Appeal, the applicant has filed a revision application on the following grounds of revision,

- 5.01. that the impugned order is illegal and improper and hence, unsustainable in law.
- 5.02. that the adjudicating authority-and the appellate authority had failed to note that the Applicant had never claimed the gold which was allegedly seized from the co-transit passenger (Virender Verma).
- 5.03. that the adjudicating authority had not applied his mind and not appreciated, analysed and discussed the issue raised;
- 5.04. that the Applicant and others had not denied the alleged incident entirely, but raised the contention that the alleged sequence of events had not occurred in the manner and nature as had been put forward

- by the Investigative Agency and the appellate authority had discarded his contention without assigning any reason at all,
- 5.05. that the adjudicating authority had not been aware that the Applicant had retracted the statement dtd. 30/9/2015 at the first opportunity; that the said statement has no evidentiary value, unless it was corroborated with substantive evidence.
 - 5.06. that the statement dtd. 30/9/2015 had been recorded when the Applicant was under the custody of the DRI officers.
 - 5.07. that the statement was recorded in English language, which the Applicant is not conversant with.
 - 5.08. that the Applicant had not raised any objection against confiscation or raised any claim over the gold allegedly seized from the baggage of the co-passenger.
 - 5.09. that the investigating authority had not made any effort or investigation to find out the source of the seized gold and also to find out the person who had handed over the two cardboard boxes to the transit passenger-Virendra Verma.
 - 5.10. that the Applicant was only a domestic passenger and who had nothing to do with the contents of the checked in baggage of another transit passenger on-board and who had thoroughly co-operated with the officers; that nothing had been recovered from the applicant.
 - 5.11. that pertinently, the Applicant did not have any criminal antecedents;
 - 5.12. that grave prejudice was done to the Applicant on account of the fact that the Adjudication was done by a different Authority whereas the investigation and the show cause was issued by another authority.
 - 5.13. that it was trite law that retracted confessions cannot form the sole basis for any finding or conclusion, unless it was corroborated and substantiated atleast in material particulars by other substantive evidence.
 - 5.14. that the Applicant belonged to a very respectable and poor family background and the penalty imposed was highly excessive and exorbitant.

The applicant has prayed to the Revision Authority, Mumbai that the Order-in-Original No. 300/2016, dtd 09/11/2016 passed by the Additional Commissioner of Customs, Cochin and the Order in Appeal No.10/2017, dtd. 28/04/2017 passed by the Commissioner of Customs (Appeals), Cochin-9, imposing a personal penalty of Rs. 3,00,000/- (Rupees three lakhs only) may be set aside in the interest of justice or to issue any other order or orders as deemed fit and proper

6. Personal hearings in the case was scheduled for 14.11.2018. Thereafter, upon the change of the Revisionary Authority, personal hearings through the online / virtual video conferencing mode were scheduled for 17.11.2021, 24.11.2021, 11.01.2021 and on 03.02.2022. No one appeared for the applicant. Also, no one appeared for the respondent. Sufficient opportunities of personal hearings having been granted, the case is taken up for a decision on the basis of evidence on record.

7. Government has gone through the facts of the case and the case papers available on the records. Government finds that this application is only on the limited issue of imposition of penalty on the Applicant. The role of the applicant, as brought out in the investigations is that on specific intelligence he had been intercepted and the person carrying the gold had elaborately revealed the role played by the applicant. The applicant too in his statement admitted his role in the smuggling operation. Government notes that this smuggling operation was a well thought out plan and the modus operandi was ingenious for the following reasons; (a). They had identified a domestic sector flight which had transit passengers from an international flight; (b). thereafter, the modus was to transfer the baggage of the international passenger to the domestic passenger; (c). they had identified the airport where they would carry out their plan, (d). the gold was melted and converted into rods to evade detection, (e). these rods were well concealed inside the door tower bolts, only the weight of the bolts gave the game away which led to a detailed examination and the gold rods ingeniously placed inside the tower bolts were detected. Government notes that the lower authorities have confirmed the absolute confiscation of the gold seized from Virender Verma and a detailed order analysing the roles played has been passed. Government finds that the lower authorities have passed a reasoned, legal and judicious order.

8. On the limited issue of the imposition of a penalty of Rs. 3,00,000/- under Section 112(b) of the Customs Act, 1962 imposed on the applicant which has been agitated in this revision application on the grounds that his statement had been retracted, the Government finds that this aspect has been gone into in great detail by the appellate authority which while rejecting the appeal, at para 8 of its Order has held,

"8. I have carefully considered the Order-in-Original, grounds of appeal and the evidence on record. I find that this is a case of wilful mis-declaration and outright smuggling by the passenger, Shri Virender Verma wherein 17 numbers of gold rods of 24 carat purity weighing 3644.200 grams were concealed by him inside the door tower bolts brought by him. The statements given by the appellant as well as by Shri Virender Verma and Shri Karamvir Sirohi clearly demonstrate the role of the appellant in the smuggling of the impugned gold. Appellant's own admission reveals that he was recruited by Shri Virender Verma and was assigned with the task of removing the package containing gold and handing over the same to the agents of the smuggling racket waiting outside the Cochin airport and with this intention he had travelled from Mumbai to Cochin as a domestic passenger in the Air India Flight on 30.09.2015. Appellant had also admitted that he had smuggled gold on various occasions through different airports and had received Rs.5000/- as remuneration for each trip. Appellant argues that the statement recorded from him was not voluntary and he had retracted his statement on the very first opportunity. In my opinion, subsequent retraction by the appellant can only be regarded as an afterthought and does not discredit the evidentiary value of the original statement recorded under Section 108 of the Customs Act 1962. It has been held by the Supreme Court in its various judgments such as Naresh J Sukhowani v Union of India [1996(83) ELT 258] and Romesh Chandra Mehta v. State of West Bengal [AIR 1970 SC 940] that the statements recorded under Section 108 of the Act ibid is a crucial piece of evidence. Further, the personal search of the appellant resulted in the recovery of a cash memo of a hardware firm issued in the name of the appellant for purchase of 17 nos of Door Hold Drops and it was admitted by the appellant that the same was carried with the intention to deceive the Customs

authorities in case enquiries were made regarding the genuineness of the tower bolts carried by him. From the above, the role played by the appellant in assisting the smuggling operations has been clearly established. The Penalty imposed on the appellant appears to be reasonable and I do not wish to interfere with it. I, therefore, do not find any infirmity in the impugned Order".

9. The Government notes that all aspects of the case have been looked into by the appellate authority. The applicant has not been able to counter the charges levelled and could not bring any contrary evidence. The fact that the invoice was recovered from him and not the actual person carrying the gold i.e. Virender Verma, his (applicant's) role stood corroborated. Government observes that the order of the appellate authority imposing penalty on the applicant is proper and judicious and the penalty of Rs. 3,00,000/- imposed is commensurate with the omissions and commissions committed. The Government finds no merit in the revision application filed by the applicant and Government does not find it necessary to interfere with the order of the appellate authority.

10. Accordingly, the revision application is dismissed.

Shrawan Kumar
25/07/22

(SHRAWAN KUMAR)

Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER NO. 225/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 25.07.2022
To,

1. Shri. Ajay Kumar, S/o. Omprakash,
Address No. 1. House No. 153/C, Bhoor Bharat Nagar, Railway Colony, Ghaziabad, Uttar Pradesh.
Address No. 2 (Permanent Address); Building No. 111, Village Ahek, Tehsil Kol, Aligarh District, Uttar Pradesh.
2. Commissioner of Customs, Custom House, Cochin - in : 682 009, Kerala.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
- ✓ 2. Guard File,
3. File Copy.
4. Notice Board.