

F.No. 375/44/B/18-RA  
F.No. 375/45/B/18-RA

REGISTERED  
SPEED POST



F.No. 375/44/B/18-RA  
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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...12/03/21

Order No. 57-58/21-Cus dated 12-03-2021 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.CC(A)Cus/D-1/Air/10-11/2018 dated 12.01.2018, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : 1. Mr. Surinder Pal Singh  
2. Mr. Jitin Gupta

Respondent : Commissioner of Customs (Airport & General), New Delhi

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**ORDER**

Revision Application Nos. 375/44/B/18-RA and 375/45/B/2018-RA both dated 24.05.2018, have been filed by Mr. Surinder Pal Singh (hereinafter referred to as the Applicant-1) and Mr. Jitin Gupta, (hereinafter referred to as the Applicant-2), respectively, against the Order No.CC(A)Cus/D-1/Air/10-11/2018 dated 12.01.2018, passed by Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. 01/2015 dated 07.01.2015, wherein three gold bars, which were recovered from the Applicant-2 (an employee of M/s Global Airport, a contract firm of M/s GMR) and brought by Applicant-1 from Bangkok, collectively weighing 1152 grams valued at Rs. 30,53,025/-, have been confiscated. The adjudicating authority has also imposed a penalty of Rs. 5,00,000/- under Sections 112(a) and (b) & 114AA of the Customs Act, 1962 on the Applicant-1 and penalty of Rs. 2,00,000/- under Section 112(a) and (b) of the Customs Act, 1962 on the Applicant-2, which have been maintained in appeal.

2. The brief facts of the case are that the Applicant-1 arrived on 19.02.2014, at IGI Airport, from Bangkok. DRI, New Delhi, on a specific information regarding smuggling of gold by way of handing over the gold brought by a passenger arriving from Bangkok, kept vigil in the arrival hall of IGI Airport, New Delhi. DRI officials noticed that a passenger entered in the toilet and after one minute, another person wearing the GMR/DIAL staff uniform, entered the same toilet. After about 2-3 minutes, it was noticed by the DRI officials that the said GMR/DIAL staff hurriedly left the said toilet and subsequently behind the GMR/DIAL

staff, the person who entered the toilet earlier also came out. As soon as the GMR/DIAL staff crossed the green channel, he was intercepted by the DRI officials near the exit gate of the arrival hall. That GMR/DIAL staff was identified as Mr. Jitin Gupta (Applicant-2). After search of his person, three gold bars were recovered from his possession. The gold bars were of 999.9 purity, weighing 1152 grams, and were appraised at Rs.30,53,025/- by the Jewellery Appraiser at IGI airport. The Applicant-2, in his statement dated 20.02.2014, recorded under Section 108 of the Customs Act, 1962 admitted that the packet containing gold bars was handed over to him by Applicant-1 in the toilet. The said packet afterwards was to be handed over to one Sh. Rakesh Verma outside the Airport. Applicant-1, in his statement dated 20.02.2014, recorded under Section 108 of the Customs Act, 1962, stated that the packet which contains gold bars was handed over to him by one Mr. Thapa at Bangkok for delivering the same to one person working at IGI Airport, New Delhi and, in return, he was to receive Rs. 10,000/-. The revision application, by Applicant-1, is filed mainly on the ground that the Applicant-1 was having no knowledge and is an innocent person; that, therefore, the personal penalty of Rs. 5,00,000/- may be set aside or token penalty may be imposed. Applicant-2 has filed the revision application on the ground that he is not at all concerned with the gold recovered from him, therefore, the personal penalty of Rs. 2,00,000/- may be set aside or token penalty may be imposed.

3. Personal hearing was granted on 12.02.2021, 22.02.2021 and 11.03.2021. Sh. D.S. Chadha, Advocate, appeared, on behalf of the Applicants, on 11.03.2021 and submitted that Applicant-1 is not the owner of the goods nor was the gold found

in his possession. He has retracted his statement before the Magistrate and he has been framed in the matter. Therefore, the case against Applicant-1 should be dropped. Applicant-2, being an employee of DIAL, found the packet lying unclaimed in the wash room and was going to deposit it with Customs but was intercepted before that by the DRI officials. Though he has not retracted his statement, it is a bonafide act. Hence only nominal penalty be imposed. Sh. R.P. Bairwa, Superintendent appeared on behalf of the respondent. He reiterated the findings of the authorities below.

4. Both the revision applications have been filed with a delay of 33 days. Delay is condoned.

5. The Government has carefully examined the case records and the submissions made. Applicant-1 has contended that he is not the owner of the goods and was framed in the matter. Government observes that the Applicant-1, in his statement dated 20.02.2014, had admitted that he carried the gold bars from Bangkok for someone else for monetary consideration. It is pertinent to mention that the fact of non-declaration under Section 77 of Customs Act, 1962 has been duly recorded in the statement tendered under Section 108 of Customs Act, 1962 signed by the Applicant-1. It is observed that the Applicant-1 retracted from his statement, before the Magistrate. However, it is observed that the applicant had admitted, in his statement, that immediately after landing he contacted Applicant-2 on his mobile. It is submitted by the applicant, now, that these calls were not made by him but by some other person who borrowed the mobile from him. No evidence has been produced to substantiate this claim nor has the person, who is claimed to

have borrowed the mobile phone, been identified and produced for evidence. It is further observed that there are calls to Sh. Rakesh Verma as well. As brought out in para 7 of the OIO, the calls and messages have been exchanged between Applicant-1, Applicant-2 and Shri Rakesh Verma over about 3 hours and it is not a case of merely one call which some random borrower of the mobile will do. Therefore, this contention is nothing but an afterthought. As such, the facts disclosed in the statement are corroborated from the independent evidence. Further, the Applicant-2, in his statement, has corroborated the admission by Applicant-1 and this statement has not been retracted. The statements of Applicant-1 & 2 are also corroborated by the statement of Sh. Rakesh Verma. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra Vs. U.O.I.[ 1997 (89) E.L.T. 646 (S.C.)], held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers.

6. Applicant – 2 has contended that he had found the packet containing gold bars lying unclaimed in the wash room and was going to deposit it with Customs. Government observes that the Applicant-2 had admitted in his statement dated 20.02.2014 that the packet was handed over to him by Applicant-1 in the toilet. It is also on record and admitted by the Applicant -2 during the course of personal hearing that the said statement was never retracted. Further, as indicated above, the statement is corroborated by evidence of calls/sms exchanged by the applicants and Sh. Rakesh Verma on their mobiles. It is also observed that as per Section 123 of the Customs Act, 1962, the onus of proving that the gold is not smuggled is on

the person from whom such gold is recovered. Applicant-2 has produced no evidence whatsoever to discharge this burden of proof.

7. In view of the above, the Government finds that Applicant-1 and Applicant-2 had in connivance with Sh. Rakesh Verma, attempted to smuggle gold and to clear it without payment of duty taking advantage of the status of Applicant-2, as a contractual employee of the airport operator. As such, there is no merit in the contentions advanced on behalf of Applicant-1 & 2.

8. The revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. Mr. Surinder Pal Singh,  
R/o- B-5/230, Preet Nagar,  
Tripuri Road,  
Patiala, Punjab.

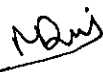
2. Sh. Jitin Gupta,  
RZG-129A, Street No. 8,  
Mahavir Enclave,  
New Delhi

Order No. 57-58 /21-Cus dated /2-03-2021

Copy to:

1. Commissioner of Customs (Airport & General), 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, New Custom House, New Delhi
4. Shri D.S. Chadha, 92 GF, Block V, Eros Garden, Faridabad 121009.
5. PA to AS(RA)
6. Guard File.
7.  Spare Copy

ATTESTED



(Nirmala Devi)  
Section Officer (Revision Application)