

SPEED POST



F.No. 375/56/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...16/4/21

Order No. 81/21-Cus dated 16-04-2021 of the Government of India passed by Sh. 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-I/Air/127/2018 dated 03.04.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Abdul Rashid Naducholayil, Goa

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

ORDER

A Revision Application No. 375/56/B/2018-RA dated 10.07.2018 has been filed by Mr. Abdul Rashid Naducholayil, Goa (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/127/2018 dated 03.04.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals) has upheld the Order-in-Original No. 114/2016 dated 11.08.2016 of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi, wherein two Gold Bars, wrapped with black adhesive tape kept in jeans pocket of the applicant, weighing 2000 grams (net weight) and valued at Rs. 49,86,320/-, have been absolutely confiscated and free allowance has been denied to the applicant. Besides, penalty of Rs.10,00,000/- has been imposed, under Section 112 & 114AA of the Customs Act, 1962, which has been maintained in appeal.

2. The brief facts of the case are that the applicant arrived on 21/22.02.2015 at IGI Airport from Bahrain and was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person two unusually heavy packets wrapped with black adhesive tape were recovered from the pocket of his jeans. The packets were unwrapped and two Gold Bars were recovered. As per the report of Jewellery Appraiser, the gold was found to be of 995 purity, weighing 2000 grams and the value was appraised as Rs. 49,86,320/-. Two gold bars, recovered from the applicant, were seized under Section 110 of the Customs Act, 1962. The applicant in his statement dated 22.02.2015, recorded under Section 108 of the Customs Act,

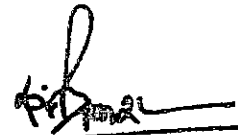
1962, admitted the recovery of two gold bars. He further stated that the gold bars were given to him by one person in Bahrain, for clearance from the IGI Airport without payment of customs duty and for onward handing over the gold bars to one person outside IGI Airport, Delhi. In consideration, he was offered a sum of Rs. 10,000/- and return air ticket to Delhi. He admitted that he was aware that import of Gold was liable to Customs Duty.

3. The revision application has been filed, mainly, canvassing that the import of gold is not prohibited hence the seized gold may be released and may be allowed to be re-exported.

4 Personal hearing was held on 13.04.2021. Sh. Mohammed Zahir, Advocate, appeared on behalf of the applicant. He reiterated the grounds of revision already stated in the revision application as well as the written submissions dated 10.04.2021. He highlighted that the original authority has adjudicated the case stating that reply to the Show Cause Notice was not filed, even though the same was filed on 12.02.2016 as evident from the seal of the department. Upon being asked, Sh. Zahir stated that this issue was also raised before the Commissioner (Appeals) and undertook to place on record a copy of the Appeal Memorandum. Sh. A. K. Meena, Superintendent, appeared on behalf of the respondent department and reiterated the findings of the lower authorities. He also undertook to verify and confirm whether the applicant had filed a reply to Show Cause Notice. Applicant submitted the copy of Appeal Memorandum. Respondent, vide email dated 13.04.2021, stated that the applicant has not filed any reply to the Show Cause Notice nor did he or his authorized representative appear for personal hearing on 04.07.2016.

5. The Government has examined the matter. The applicant has contended that he had submitted a reply dated 10.02.2016 to the Show Cause Notice but the same was not considered by the adjudicating authority while passing the impugned Order-in-Original. Government observes that a receipt stamp dated 12.02.2016, of Indian Customs, IGI Airport, New Delhi, is affixed on the face of the reply dated 10.02.2016. Further, the non consideration of the reply dated 10.02.2016 was also raised by the applicant before the Commissioner (Appeals), as evident from the Appeal Memorandum filed at the time of filing of appeal before the Commissioner (Appeals) but this plea was not considered by the Commissioner (Appeals). Government holds that the non consideration of reply dated 10.02.2016 is in violation of the principles of natural justice and that, therefore, the proceedings held before the lower authorities have been vitiated. As such, it would be in the interest of justice, that the case is remanded back to the original authority for deciding the matter afresh after taking into consideration the reply dated 10.02.2016 filed by the applicant herein and affording the opportunity of personal hearing, as per law.

6. In view of the above, the orders of the lower authorities are set aside and the revision application is allowed by way of remand to the original authority.



(Sandeep Prakash)

Additional Secretary to the Government of India

Mr. Abdul Rashid Naducholayil,
H.No. 143, Next to Football Ground,
Duler Mapusa Bardez,
North Goa-403-507

Order No. 81/21-Cus dated 16-04-2021

Copy to:

1. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037.
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, Delhi-110037.
4. Sh. Mohd Zahir, Advocate, 3/57-A, Nedungadi Gardens, west Nadakkavu, Calicut, Kerela-673-011
5. PA to AS(RA).
6. Guard File.
7. *Spare Copy.*

ATTESTED



(Nirmala Devi)
Section Officer (Revision Application)