

REGISTERED
SPEED POST



F.No. 375/75/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. 20/5/21

Order No. 97/21-Cus dated 20-5-2021 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/179/2018 dated 22.06.2018, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Sh. Mudit Sadh, Delhi

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

ORDER

A Revision Application No.375/75/B/2018-RA dated 05.09.2018 has been filed by Sh. Mudit Sadh (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)/Cus/D-I/Air/179/2018 dated 22.06.2018 passed by the Commissioner of Customs (Appeals), New Delhi wherein the appeal filed by the Applicant against the Order-in-Original No. 133/ADJ/2016 dated 30.08.2016 passed by the Additional Commissioner of Customs, IGI Airport, New Delhi has been partially allowed.

2. Briefly stated, the Applicant and his wife Ms. Deepika Sadh arrived at the IGI Airport on 03.04.2015 from Dubai. Upon search, three pieces of gold, total by weighing 1754 gms, valued at Rs. 42,67,833/-, were recovered from the Denim Shorts worn by Ms. Deepika Sadh under her leggings. Ms. Deepika Sadh had not made any declaration in respect of recovered gold in column 9 of the disembarkation slip and had declared 'No' against column 10(i) and 10(ix). The gold recovered was seized on 03.04.2015. Ms. Deepika Sadh in her statement, recorded under Section 108 of the Customs Act, on 03.04.2015, admitted the recovery of the seized gold from her possession and agreed with the contents of Panchnama dated 03.04.2015. She further stated that the said gold was purchased by her husband, Sh. Mudit Sadh (Applicant herein), from Dubai and produced a purchase invoice dated 02.04.2015 in this regard. She further stated that her husband i.e. the Applicant instructed her to conceal the gold purchased by him in her Denim Shorts worn by her under the leggings. The Applicant, in his statement dated 03.04.2015, corroborated the aforesaid statement made by his wife. Ms. Deepika Sadh and the Applicant again

admitted their guilt in separate statements recorded on 27.04.2015 and confirmed the contents of their earlier statements dated 03.04.2015. The Additional Commissioner of Customs, vide the aforesaid Order-in-Original dated 30.08.2016, ordered absolute confiscation of the seized gold and imposed a penalty of Rs. 4,25,000/- each on Ms. Deepika Sadh and the Applicant under Section 112 and Section 114AA of the Customs Act, 1962. In the appeal filed by the Applicant, the Commissioner (Appeals) held that Section 114 AA is not invocable against him as he did not file any declaration or made any statement false or incorrect. However, he held that the penalty under Section 112 is imposable. In this light, the penalty imposed on the Applicant was reduced to Rs. 50,000/-.

3. The revision application has been filed broadly on the ground that gold was brought by his wife Ms. Deepika Sadh and there is no finding by the lower authority that the Applicant had dealt with the gold liable to confiscation in any manner. Therefore, penalty is not imposable under Section 112.

4. Personal hearing in the matter was held on 19.05.2021. Sh. S.S. Arora, Advocate made the submissions on behalf of the Applicant. He highlighted that Commissioner (Appeals) has found that no misdeclaration was made by the Applicant. No other act of omission or commission has also been found against the Applicant. Hence, penalty under Section 112 is not imposable. No one appeared for the respondent department nor any request for adjournment has been received. Therefore, the matter is being taken up for disposal based on records.

5. The Government has examined the matter. Short point that arises for consideration is whether penalty under Section 112 of the Customs Act, 1962 is imposable on the Applicant herein. It is the contention of the Applicant that no misdeclaration was made by him and no other act of omission or commission has also been found against him. Therefore, penalty under Section 112 is not imposable. The Government observes that the seized gold was purchased by the Applicant and during the investigation, both the applicant and his wife admitted that the Applicant's wife concealed the gold in her Denim Shorts worn under the leggings at the instructions of the Applicant. Therefore, there is no doubt that smuggling, in the instant case, was made at the instance of Applicant herein. As such, the Applicant is liable to penalty under Section 112 of the Customs Act. The impugned Order-in-Appeal, therefore, does not merit any interference.

6. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Mudit Sadh,
R/o 109, Street No. 4, East Azad Nagar,
Krishna Nagar, New Delhi- 110 051.

Order No. 97 /21-Cus dated 20-5-2021

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, Delhi-110 037.
2. The Commissioner of Customs, Airport & General, IGI Airport, Terminal-3, New Delhi- 110 037.
3. Sh. S.S. Arora, Advocate, BI/71 Safdarjung Enclave, New Delhi- 110 029.

4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

Ravi
20/10/15

RAVI PRAKASH
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