

REGISTERED
SPEED POST



F.No. 375/103/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... 28/7/21

Order No. 142/21-Cus dated 27-7-2021 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/345/2018 dated 06.09.2018, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi

Applicant : Mr. Yogesh Kumar, New Delhi

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

ORDER

A Revision Application No.375/103/B/2018-RA dated 10.10.2018 has been filed by Mr. Yogesh Kumar, New Delhi (hereinafter referred to as the Applicant) against the Order No.CC(A)Cus/D-1/Air/345/2018 dated 06.09.2018, passed by the 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. 44/Adj/2016 dated 27.05.2016, imposing penalty of Rs. 10,00,000/- on the Applicant.

2. The brief facts of the case are that one person Mr. Jitender Kumar, was intercepted by the CISF personnel and brought to the Customs area and during his personal search two metal bars were recovered from his pocket. The gold bars, weighing 2000 grams, were appraised at Rs. 50,96,480/- by the Jewellery Appraiser at IGI airport. Mr. Jitender Kumar, in his statement dated 22.05.2014, stated that one Mr. Yogesh Kumar met him in bathroom and offered him to carry gold bars outside the Airport. In order to verify the statement of Mr. Jitender Kumar, he was shown CCTV footage wherein he identified the person, namely, Mr. Yogesh Kumar (Applicant) and also identified the passenger, namely, Mr. Mohammad Kamran, who kept the gold bar packets in the bathroom. On being summoned by the Customs Officer, Applicant in his statement dated 29.06.2014, recorded under Section 108 of the Customs Act, 1962, stated that he was posted in FRRO unit at IGI Airport in immigration department; that he went to washroom in the arrival area as there was no Indian style toilet in the departure hall; that he had no knowledge of 2000 grams

gold recovered from Mr. Jitender Kumar. He was shown CCTV footage wherein he recognized himself and Mr. Jitender Kumar, but did not recognize the passenger Mr. Mohammad Kamran. The revision application is filed, mainly, on the ground that there is no evidence on record to show that the gold was handed over to the Applicant by Mr. Mohd. Kamran; that statement of Mr. Jitender Kumar is not corroborated by independent evidence.

3. A personal hearing, in virtual mode, was held on 26.07.2021. Sh. S.S. Arora, Advocate, appeared on behalf of the Applicant and reiterated the contents of the revision application and written submissions dated 22.07.2021. Sh. Arora stressed that the Applicant never acquired possession of the gold nor did he carry it. Hence, no penalty should be imposed. Sh. Rajnish Kumar, Superintendent supported the orders of the lower authorities. He highlighted that the Applicant was posted in the Departure area but came to the arrival side to enable the other noticers to clear the smuggled gold. He was an active participant and, hence, penalty imposed is justified.

4. The Government has carefully examined the matter. The issue that requires consideration is whether the penalty should be imposed on the Applicant in the facts and circumstances of the case. It is observed that the gold was attempted to be smuggled by one Mr. Mohammad Kamran allegedly with the help of Mr. Jitender Kumar and the Applicant. It is the contention of the department that the Applicant had connived with these other persons in an attempt to smuggle the gold bars by

misusing his position as a worker in an organization located in the premises of IGI Airport and due to which he had easy access to the interior area of airport. On the other hand, it is the contention of the Applicant that he neither handled the gold nor did he carry it. The Government observes that Mr. Jitender Kumar, who was intercepted while carrying gold, has in his statement tendered under Section 108 of the Customs Act identified the Applicant herein as the person who had induced him to carry the gold bars smuggled by Mr. Mohd. Kamran, the passenger. Mr. Jitender Kumar also identified the Applicant and the passenger in the CCTV footage of the washroom in the Arrival area of the airport where the exchange of smuggled gold took place. Further, the Applicant was posted in the departure area and was found in the washroom of the arrival area, which is on a different level than the departure area. Thus, the role played by the applicant herein, as revealed by Mr. Jitender Kumar, is independently corroborated by the CCTV footage as well as the fact that the Applicant chose to go to washroom at an entirely different level in a very large airport like IGI Airport, New Delhi. The contention of the Applicant that he chose to go to the washroom in the Arrival area as there was no Indian style toilet in the Departure Hall appears to be far-fetched. As such, the Government has no hesitation in concluding that the Applicant played an active role in smuggling of gold and concerned himself with removing etc. of the contraband. Therefore, the Applicant is liable to penalty under Section 112 (a) & (b) *ibid*. The Commissioner (Appeals) has held that Section 114AA is not applicable against the Applicant – a finding which is not challenged by the department. After due consideration of all aspects, the Government finds that the penalty of Rs. 10,00,000/- imposed by the

original authority, as upheld by the Commissioner (Appeals), should be reduced to Rs. 5,00,000/- as the penalty under Section 114AA is not applicable.

5. Accordingly, the revision application is partly allowed to the extent of reduction of penalty as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

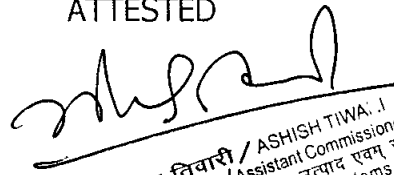
Mr. Yogesh Kumar,
R/o 24/25, A Block, Tilak Nagar,
New Delhi.

Order No. 142/21-Cus dated 27-7-2021

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
3. Additional Commissioner of Customs, IGI Airport, New Custom House, New Delhi
4. Shri. S.S. Arora, Advocate, B 1/71, Safdarjung Enclave, new Delhi 110029
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED



आशीष तिवारी / ASHISH TIWARI, I
सहायक आयुक्त/Assistant Commissioner
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क
CGST, Central Excise & Customs
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
भारत सरकार / Government of India
नई दिल्ली / New Delhi