

SPEED POST



F. No. 380/22/B/SZ/2020-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 28/4/23

Order No. 158 /23-Cus dated 28-04-2023 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. 165/2019 dated 28.11.2019, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : The Commissioner of Customs, Mangaluru.
Respondent : Sh. Mohammed Apsar Ahammed Kunhi, Kasargod.

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ORDER

A Revision Application No. 380/22/B/SZ/2020-RA dated 13.03.2020 has been filed by the Commissioner of Customs, Mangaluru (hereinafter referred to as the 'Applicant'), against the Order-in-Appeal No. 165/2019 dated 28.11.2019, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, upheld the Order-in-Original No. 04/2019 dated 06.01.2019, passed by the Deputy Commissioner of Customs, (Airport), Mangaluru whereby the original authority had ordered for absolute confiscation of gold weighing 231.500 grams, valued at Rs. 7,13,020/-, recovered from Sh. Mohammed Apsar Ahammed Kunhi, Kasargod (hereinafter referred to as the 'Respondent'). Penalties of Rs. 2,00,000/- and Rs. 50,000/- were also imposed on the Respondent under Section 112 (a) and Section 114AA, respectively, of the Customs Act, 1962.

2. Briefly stated, the Respondent herein arrived at the Mangaluru International Airport, on 08.04.2018, from Dubai. He was intercepted by the Customs Officer when the gold objects weighing 231.500 grams were recovered from the retractable handle portion of the trolley bags carried by the Respondent herein. It was observed that the Respondent had made no declaration in respect of the gold and had also denied possession of any dutiable/contraband goods when orally asked to make a declaration by the officers. During the investigations, it came on record that the Respondent was acting as a carrier for a monetary remuneration of Rs. 10,000/-. The original authority, after following the principles of natural justice, passed orders as brought out in para-1 above. The Applicant department was, however, aggrieved and approached the Commissioner (Appeals) for enhancing the penalties imposed under Section 112 and 114 AA ibid. The appeal filed by the department has, however, been rejected by the Commissioner (Appeals), vide the Order-in-Appeal impugned herein.

3. The revision application has been filed, mainly, on the grounds that the appellate authority had rejected the department's appeal for higher penalty on the ground that the passenger, i.e., Respondent herein was merely a carrier who had smuggled goods for small monetary consideration; that the Customs Act does not differentiate between

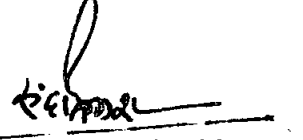
carriers and kingpins; and that the penalty should be imposed in the manner which is deterrent to the smuggling activities.

4. Personal hearings in the matter were fixed on 18.04.2022, 24.04.2023 and 28.04.2023. Sh. Vasudev Naik, AC appeared for the Applicant department in the hearing held, in virtual mode, on 18.04.2023. However, no one appeared for the Respondent on any of the dates fixed for hearing nor any request for adjournment has been received. Since sufficient opportunities have been granted to the Respondent, the matter is taken up for disposal.

5. The Government has carefully examined the matter. The short point that arises for consideration is whether the penalties imposed by the original authority, as upheld by the Commissioner (Appeals), are commensurate with the nature and gravity of the offence. No doubt, Section 112 of the Customs Act, 1962 empowers the adjudicating authority to levy a penalty not exceeding the value of the goods or Rs. 5,000/-, whichever is greater, in case of 'prohibited goods' whereas in the case of Section 114AA, the ceiling up to which the penalty can be imposed is five times the value of the goods. Unlike Section 114A of the Act which provides that a penalty equal to the duty or interest evaded by the reason of collusion or willful statement or suppression of facts is liable to be imposed, Section 112 & Section 114AA do not mandate the quantum of penalty to be imposed. It is left to the discretion of the adjudicating authority to impose penalty within the limits specified considering the nature, facts and circumstances of the offence. Therefore, no hard and fast rule can be followed while imposing penalties under Section 112 & Section 114AA. The department has heavily relied upon the judgment of the Hon'ble Supreme Court in the case of Jethmal vs. Union of India {1999 (110) ELT 379 (SC)}, wherein the Hon'ble Apex Court has upheld the penalty of Rs. 50,000/- imposed in a case of smuggling of gold valued at Rs. 1,00,000/- by holding that such a penalty was not out of proportion compared to the gravity of the offence. Thus, this judgment itself lays down that while imposing penalty gravity of offence has to be taken into consideration. The Government finds that the Commissioner (Appeals) has appropriately considered the case and has

upheld the penalty after appropriately balancing the nature of the offence with the mitigating factors. Therefore, the impugned Order-in-Appeal does not merit revision.

6. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

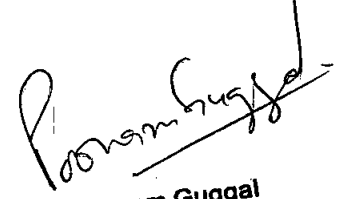
The Commissioner of Customs,
Mangaluru, New Customs House,
Penambur, Mangaluru-575010.

Order No. 158/23-Cus dated 28-04-2023

Copy to:

1. Sh. Mohammed Apsar Ahammed Kunhi, S/o Shri Baduvan Kunhi Ahammed Kunhi, 144 (10/160), Ahmed Manzil, Uppala PO, Kasargod-671322.
2. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Domlur, Bengaluru-560071.
3. PPS to AS (RA).
4. Guard file.
5. Spare Copy.
6. Notice Board.

ATTESTED



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