

SPEED POST



F.No. 373/164/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..03/09/24.

Order No. 180/24-Cus dated 03-09-2024 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal Airport. Cus. I. No. 142/2020 dated 10.06.2020, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Kamar Ali, Chennai

Respondent : The Principal Commissioner of Customs, Chennai-I

ORDER

Revision Application No. 373/164/B/SZ/2020-RA dated 24.07.2020 has been filed by Shri Kamar Ali, Chennai (hereinafter referred to as the Applicant/passenger/pax) against the Order-in-Appeal Airport. Cus. I. No. 142/2020 dated 10.06.2020, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original No. 354/2019-20-Commissionerate-I dated 19.02.2020 passed by the Joint Commissioner of Customs (Adjudication-AIR), Chennai Airport and Air Cargo Complex, Chennai-I

2. Brief facts of the case are that, the Applicant, an Indian passport holder, who arrived in India at Anna International Terminal, Chennai Airport, Meenambakkam, Chennai from Kuala Lumpur on 20.01.2019, was intercepted by the officers of Air Intelligence Unit of Customs, Chennai Airport at the exit of the arrival hall of the Airport on the reasonable suspicion that he might be carrying gold/contraband goods either in his baggage or on his person. During the search of his person, two gold cut bits, weighing 40 grams were recovered from his pant pocket. On examination of his checked-in baggage, 47 nos. of PS4 play station joy sticks were recovered and on breaking open their motor portions, 94 nos. of gold ingots, weighing 3105 grams were recovered. The total value of the gold so recovered was Rs. 1,04,94,865/- and found to be of 24 carat purity as certified by an approved gold assayer. The passenger was ineligible to import gold due to short visit abroad. He was neither in possession of any valid document for the legal import of the impugned gold into India nor did he declare the impugned gold. Since he attempted to smuggle 3.145 kg of gold by concealment, the recovered gold along with material objects were seized under a mahazar dated 20.01.2019 under Section 110 of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 for further action.

3. In his voluntary statement dated 20.01.2019 recorded under Section of 108 of the Customs Act, 1962 immediately after the seizure of the impugned gold, the Applicant stated inter-alia that he was a frequent traveller to Kuala Lumpur & Dubai; and had visited abroad 20 times in the previous six months; that he used to carry textile goods and sell them in Dubai and Kuala Lumpur for profit and upon his return he would bring electronic

goods to sell in India. In this way he used to earn Rs. 20,000/- per month; that likewise he went to Kuala Lumpur on 19.01.2019 and returned on 20.01.2019. He further stated that 47 nos. of PS4 play station joy sticks containing gold were handed over to him by one person named Raja outside the Kuala Lumpur Airport with an instruction to hand it over to an unknown person who would identify him via photograph and pay him Rs. 12,000/- for carrying it. He further stated that Raja had not provided him any details about the receiver of the gold and he did not have any contact details of Raja. He admitted that he was well aware that smuggling of gold by way of concealing and non-declaration to Customs was an offence and he committed the offence for monetary benefit.

4. In his next voluntary statement given under Section 108 of the Customs Act, 1962 on 21.01.2019, the Applicant reiterated what he stated in his statement given on 20.01.2019. In addition, he stated, inter-alia that 02 gold bits were handed over to him by an unknown person outside the Kuala Lumpur airport with an instruction to hand over it to an unknown person who would identify him with his photo and would pay him Rs. 3,000/-. He further stated that he did not know that gold was concealed in the joy sticks at the time of receiving the same and also did not know who would receive the gold and that he does not claim ownership of the seized gold. He again stated that he knew smuggling and helping to smuggle the gold is an offence. As the Applicant attempted to smuggle gold into India by way of ingenious concealment by contravening the provision of the Customs Act, 1962 and thus had committed an offence punishable under Section 132 and 135(1)(a) & (b) of the Customs Act, 1962 read with Foreign Trade Development & Regulation Act, 1992, he was arrested under Section 104 of the Customs Act, 1962 and granted bail on the same day.

5. After due process of law, the adjudicating authority vide aforesaid Order-in-Original No. 354/2019-20-Commissionerate-I dated 19.02.2020 adjudicated the case and absolutely confiscated the seized gold ingots and gold bits totally weighing 3.145 kg of Rs. 1,04,94,865/- under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992, as well as the material objects used to conceal the said gold viz. PS4 play station joy sticks, under

Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 15,00,000/- was also imposed on the Applicant under Section 112 (a) of the Act, *ibid*.

6. Aggrieved, the Applicant filed appeal before the Commissioner of Customs (Appeals-I), Chennai who has rejected the appeal and upheld the OIO. Aggrieved by OIA, the Applicant filed this Revision Application.

7. The instant revision application has been filed mainly on the grounds that order of the adjudicating authority is against law, weight of evidence and circumstances and probabilities of the case; he was all along under the control of the officers of Customs and he was at the red channel; that he did not know that the gold was concealed in the PS4 play station joy sticks. His prayer was to set aside the impugned order and also to set aside/ reduce the penalty.

8. Personal hearing in the matter was fixed on 15.07.2024. Smt. P. Kamalamalar, Advocate on behalf of the Applicant appeared and reiterated the written submissions in revision application. Sh. S. Ramesh, Assistant Commissioner of Customs (Legal & Review), Chennai-I vide letter dated 15.07.2024 submitted that the Applicant did not declare the gold and tried to smuggle the impugned gold; that he was intercepted at the exit point; that the appeal filed by the Applicant be set aside.

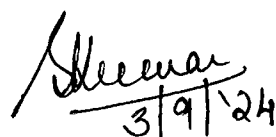
9. The Government has examined the matter. It is observed that the impugned goods were recovered from the Applicant when search was conducted by Customs and that the goods were not declared by the Applicant despite being aware that smuggling of goods by not declaring them to Customs and evading the payment of duty is a violation of the law. He has admitted as much in his statement given to Customs under Section of 108 of the Customs Act, 1962. The sequence of events has been recorded vide mahazar dated 20.01.2019 in presence of independent witnesses which also substantiates the acts of Applicant in an attempt to smuggle the confiscated goods. Therefore, the contentions of the Applicant are not tenable. Reliance is placed on the judgement of Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, wherein Hon'ble Supreme Court 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. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction." In the present case, the Applicant's statement makes it clear that he was involved in smuggling due to lure of money.

10. As per Section 123 of the Act, *ibid*, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person from whom goods are recovered. The Applicant did not declare the gold items, as stipulated under Section 77 of the Act, *ibid*. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government concurs with the lower authorities that the impugned gold items were liable to confiscation under Section 111 *ibid* and that the Applicant was liable for penalty.

11. Keeping in view facts and circumstances of the case, the penalty imposed is just and fair.

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


3/9/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Kamar Ali,
S/o Shri Mubarak Syed Irfan,
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Order No. 180 /24-Cus dated 03-09-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3rd floor, New Custom House, GST Road, Meenambakkam, Chennai – 600016
2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027

3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
6. ✓ Spare Copy
7. Notice Board

ATTESTED


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