

SPEED POST



F. No. 373/434/B/2019-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. 06/09/24...

Order No. 186/24-Cus dated 06-09-2024 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 Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CAL-EXCUS-000-APP-357 & 358-2019 dated 29.03.2019 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi.

Applicant : Sh. Muhammed Fasil, Kannur

Respondent : The Commissioner of Customs (P), Kochi

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ORDER

Revision Application No. 373/434/B/2019-RA dated 22.10.2019, has been filed by Sh. Muhammed Fasil, Kannur (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CAL-EXCUS-000-APP-357 & 358-2019 dated 29.03.2019, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi. The Commissioner (Appeals) has upheld the Order-in-Original, passed by the Joint Commissioner of Customs, Airport, Calicut, bearing no. 78/2015-16 dated 29.03.2016 except to the extent of setting aside the penalty of Rs. 1,25,000/- imposed upon the Applicant under Section 114AA of the Customs Act, 1962. Vide the aforesaid Order-in-Original 13 gold sticks having 24 carat purity, weighing 465 grams and valued at Rs. 11,92,097/- (Tariff Value) & Rs. 14,08,950/- (Market Value), recovered from the Applicant were confiscated absolutely under Section 111(d), (i), (j), (l), (m) & (o) of the Act *ibid*. Besides, penalties of Rs. 1,25,000/- each were also imposed on the Applicant under Section 112(a)&(b) and 114AA, respectively, of the Act *ibid*. Further, a penalty of Rs. 1,00,000/- was also imposed upon one person named Saheer under Section 112(a)&(b) of the Act, *ibid*.

2. Brief facts of the case are that acting on specific information, Customs officers intercepted the Applicant, an Indian passport holder, upon his arrival at Calicut International Airport from Dubai on 02.12.2013 when he was about to cross the exit gate of the baggage hall through the green channel clearance. He was enquired whether he was in possession of non duty paid gold or any other valuables, he replied in the negative. The Customs Declaration Form signed by him showed total value of goods imported as Rs. 10,000/-. Upon the search of his person 400 UAE Dirham were found in his purse which was kept in his pant's pocket. Thereafter a cardboard box which was his check-in baggage was examined which resulted in the recovery of a packet of Sketch pens. Thirteen sticks of yellow metal were found from inside the sketch pens so recovered. No other foreign or Indian currency was recovered either from his person or from his baggage. The said gold sticks were subjected to purity check by Sh. N.V Unnikrishnan, Aswathy House, P.O. Kondotty, Malappuram and it was certified by the assayer that the said 13 yellow metal

sticks were of gold having 24 carat purity, totally weighing 465 grams. The tariff value for import of the said gold recovered was arrived at Rs. 11,92,097/-.

In his statement dated 02.12.2013, tendered under Section 108 of Customs Act, 1962, the Applicant stated inter-alia that he had worked as a driver in a company at Qatar for over an year during 2011 and had not returned back after coming on leave to India; that in 2012 he went to Dubai; that he worked there in his cousin's shop for over 40 days and came back to India; that after he again went to Dubai on 24.10.2013; that when he informed his friend Sahir about his intention to go to India, he informed him that he would be paid 300 Dirhams if he took a few household utensil and dresses belonging to his friend Salah; that he agreed to it; that accordingly, Salah came to his room with his goods in a bag at 7:00 in the evening of 30.11.2013 and entrusted with him 300 Dirhams; that Salah informed him that after he reaches his residence, a person would visit his residence and that he should entrust to him the goods he had given to him; that he knew smuggling of gold without payment of duty is a punishable offence; that he was not aware that gold was concealed in the bag handed over to him by Salah; and that he agreed to take the luggage of Salah to earn 300 Dirhams.

The matter was decided vide the aforesaid Order-in-Original dated 29.03.2016. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been modified as above.

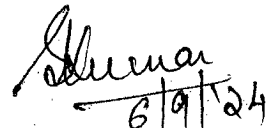
3. The Applicant has filed revision application mainly on the grounds that the statement is fabricated; that gate pass was seized from the possession of the applicant which should have been seized from the gate officer if in fact the applicant came through the Green Channel; that Foreign Trade (Exemption from application of Rules in Certain Cases) Order, 1993 has nothing to do with prohibition of gold and the second proviso to Rule 3(1)(h) is only an exemption to the application of the Rules and the same cannot be construed as to prohibit import of gold as baggage; that neither the violation of the conditions prescribed under Rule 3(1)(h) of Foreign Trade (Exemption from application of rules in certain cases) Order, 1993 nor the violation of Section 77 of the Customs Act makes gold prohibited unless and until it is expressly prohibited either under the Customs Act or under any other law for the time being in force; and that the gold is only a dutiable

item and hence cannot be absolutely confiscated and that grant of permission for redemption invoking Section 125 of the Customs Act is mandatory.

4. Personal hearings was fixed on 20.03.2024 which was adjourned to 19.04.2024 on the request of Mohd. Zaheer, Advocate for the applicant. The hearing was again refixed for 01.05.2024 on the request of Mohd. Zaheer. No one appeared for either side on the said date. In the hearing held on 08.05.2024, Mohd. Zaheer submitted that the only issue he wishes to highlight is that of penalty. While Commissioner (Appeals) has set aside the penalty under section 114AA but has upheld penalty under section 112(a) and (b). In this context he submitted that combined penalty under section 112(a) and (b) is not legally sustainable and he sought redressal of the same. No one appeared for the respondent. As such it is presumed that the respondent has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed that the instant revision application has been filed without being accompanied by the fee required in terms of sub-section (3) of Section 129DD, *ibid*. Since the Applicant has not fulfilled this mandatory requirement, despite being advised to do so, vide letters dated 13.03.2024, 09.04.2024, 19.04.2024 and 02.05.2024, the revision application is liable to be rejected as non-maintainable.

6. The revision application is therefore rejected without traversing the merits of the case.



(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Muhammed Fasil
S/o Sh. Mahmood Kootteri Peedikayil
Kootteri Peedikayil House
P.O Panoor, Thalassery Via
Kannur District, Kerala-670692.

Order No. 186 /24-Cus dated 06-09-2024

Copy to:

1. The Commissioner of Central Tax, Central Excise & Customs (Appeals), Central Revenue Building, I.S Press Road, Kochi-682018.

2. The Commissioner of Central Excise, Customs & Service Tax, C.R Building, Mananchira, Calicut-673001.
3. Sh. Mohammed Zahir, Advocate, 3/57-A, Nedungadi Gardens, West Nadakkau, Calicut-673011.
4. PPS to AS(RA):
5. Guard file.
6. ✓ Spare Copy.
7. Notice Board.

Srujan
(शैलेंद्र कुमार मीना)
ATTESTED (शैलेंद्र कुमार मीना)
Srujan Kumar Meena
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली - 110 001