

SPEED POST



F. No. 373/227/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.. 26/5/23

Order No. 205 /23-Cus dated 26.5.2023 of the Government of India passed by Sh. Sandeep Prakash, 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 AIRPORT. C.Cus.I No. 58/2018 dated 24.04.2018, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. M. Asanth, Chennai

Respondent : Pr. Commissioner of Customs, Chennai-I

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ORDER

A Revision Application, bearing No. 373/227/B/2018-RA dated 27.08.2018, has been filed by Sh. M. Asanth, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal AIRPORT. C.Cus.I No. 58/2018 dated 24.04.2018, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Joint Commissioner of Customs, Anna International Airport, Chennai, bearing No. 145/2017-18-Airport dated 31.10.2017. Vide the aforementioned Order-in-Original, 16 foreign origin gold bars of 10 tola each, i.e., 1.864 Kg of gold collectively valued at Rs. 56,31,144/-, recovered from Sh. Mohamed Asik Seyed Hameed, was absolutely confiscated under Sections 111(d) & 111(i) of the Customs Act, 1962. Besides, penalty of Rs. 2,00,000/- was imposed on the Applicant herein along with different amounts of penalties imposed on other persons, under Section 112 of the Act, *ibid.*

2. Brief facts of the case are that the officers of Directorate of Revenue Intelligence, Chennai Zonal Unit (DRI-CZU), based on a specific intelligence, intercepted a person, namely, Sh. Mohamed Asik Seyed Hameed upon his arrival at Anna International Airport, Chennai from Abu Dhabi, on 16.10.2016. Upon being enquired, Sh. Mohamed Asik admitted that he was carrying 16 foreign origin gold bars of 10 tola each in two packets in his pant pockets. Upon being further enquired, Sh. Mohamed Asik opened the Whatsapp application on his phone and showed the photo of the person to whom the smuggled gold bars were to be handed over by him at the aerobridge area. Thereafter, the officers identified the person in the Whatsapp photo at the Arrival Hall of the airport and on enquiry the said person introduced himself as Sh. Asanth (the Applicant herein), Customer Service Agent in M/s. Bhadra International Pvt. Ltd. Thereafter, Sh. Mohamed Asik was subjected to personal search by the officers which resulted in the recovery of 16 numbers of gold bars from 02 packets. Each packet was found to contain 8 pieces of gold bars with foreign markings on each packet. The Government approved assayer examined the recovered gold bars and certified them to be of 24 carat purity, weighing 116.5 grams each, and collectively valued at Rs. 56,31,144/-. The Applicant in his statement dated 16.10.2016, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that he was working for M/s. Bhadra International Pvt. Ltd. as Customer Service Agent from

the year 2016; that he had known one Gowtham who was also working in the same company; that his job was to assist in handling of check-in baggage for Etihad Airlines; that in this capacity he had access to the aerobridge, domestic and international arrival, departure and other places in airport; that Gowtham who was known to him for 2 months had informed him about helping in smuggling of gold from passengers arriving in Chennai Airport, by handing over the smuggled gold to another person in order to evade customs duty; that he had, on one previous occasion, helped Gowtham by taking the smuggled gold from the passenger in the aerobridge and handing over the same to Gowtham after crossing the Customs area, for which he was given Rs. 7,000/- by Gowtham; that on 15.10.2016, Gowtham had met him and requested him to help in the smuggling of gold from a passenger arriving by Etihad Airlines EY 268; that Gowtham had sent the Applicant's photo to the passenger carrying gold; that the passenger would look like a Japanese with fair complexion; that Gowtham used to get Rs. 20,000/- for the smuggling of gold through the Customs area; that when he went to the aerobridge to collect the smuggled gold from the passenger, he had received a call and hence he went to the baggage belt area due to non-availability of their staff in that area; that he was intercepted by the DRI officers at the arrival hall of the airport; that he identified Asik, the passenger whose description matched with what Gowtham had stated; and that he was helping in the smuggling of gold for monetary consideration. The matter was adjudicated by the original authority, as above, vide aforesaid Order-in-Original dated 31.10.2017. The appeal filed by the Applicant herein, before the Commissioner (Appeals), has been rejected.

3. The revision application has been filed, mainly, on the grounds that statement under Section 108 would amount to extra judicial confessions and reliance on such statement cannot form basis for the finding; that the statement was retracted by the Applicant; and that penalty amount imposed upon him is highly excessive and be set aside.

4. Personal hearing was fixed on 15.05.2023 & 24.05.2023. No one joined for either side nor any request for adjournment was received. However, subsequently, Smt. Kamalamalar Palanikumar, Advocate for the Applicant, vide email dated 24.05.2023,

informed that she could not attend the personal hearing and requested to pass an order with the available records. Hence, the matter is being taken up for disposal based on records.


5. At the outset, the Government observes that the OIA impugned herein was received by the Applicant on 09.05.2018 whereas the RA has been filed on 27.08.2018. Therefore, the RA has been filed beyond the normal period of limitation of three months, as per sub-section (2) of Section 129DD *ibid*. A request for condonation of delay has been filed stating that the Applicant had on 09.08.2018 approached CESTAT, Chennai to file an appeal but was informed to file RA. However, this averment is not supported by any documentary evidence etc. Hence, the request for condonation of delay is liable to be rejected as unsubstantiated and, consequently, the RA is liable to be held as time barred.

6.1 On merits, it is alleged that the gold bars recovered from Sh. Mohamed Asik were intended to be handed over to the Applicant. The lower authorities, by their concurrent findings, have upheld this allegation against the Applicant herein. However, the Applicant's claim is that he has been dragged into the matter based only on statements, which were obtained forcibly. He also claims to have retracted his own statement. At the outset, it is observed that no retraction has been placed on record. Further, retraction, if any, as part of reply to show cause notice, was filed more than six months after the statement was originally recorded and, thus, it appears to be more in the nature of afterthought. It is also observed that several other persons involved in the matter have also specifically revealed the role played by the Applicant. In fact, it is at the instance of Sh. Mohamed Asik, from whom gold was recovered, and with reference to the photo of the Applicant in Sh. Asik's phone that the Applicant herein was identified as the person who would receive the smuggled gold and carry it outside the airport. This fact by itself is sufficient to establish his complicity in the matter. Therefore, the Government has no doubt that the statements made were voluntary in nature. 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. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, 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. Hence, the subject contention can not be accepted.

6.2 Only question that, therefore, remains for consideration is whether the penalty imposed on the Applicant herein is commensurate with the gravity of the offence. The Government observes that in this case smuggling was being carried out in a well organized and premeditated manner, by compromising the staff of a ground handling agency operating at the airport. The Applicant herein taking advantage of his privileged position as a person having access inside the airport was aiding and abetting in smuggling of gold. Therefore, in the facts and circumstances of this case, deterrent penalty ought to have been imposed. However, the original authority has only imposed penalty of Rs. 2,00,000/-, which works out to merely 3.55% of the value of seized goods. Therefore, the original authority has been rather lenient in imposing the penalty. As such, no case for reduction in penalty is made out.

7. In view of the above, the revision application is rejected as time barred as well as on merits.



(Sandeep Prakash)

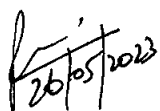
Additional Secretary to the Government of India

Sh. M. Asanth
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Order No. 205/23-Cus dated 26.5.2023

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
2. The Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai-600027.
3. Sh. P. Kamalamalar, Advocate, No. 21, Kubera Building, Sunkurama Street, Second Floor, Chennai-600001.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED  26/05/2023
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