

**SPEED POST**



F. No. 375/72/B/2021-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...07/7/22

Order No. 213/22-Cus dated 07-07-2022 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 under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Air/1717-18/2021-22 dated 31.12.2021 passed by the Commissioner of Customs (Appeals), New Delhi

Applicant : Sh. Gourav Sharma, Amritsar, Punjab

Respondent : Commissioner of Customs, IGI Airport, New Delhi

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**ORDER**

A Revision Application No. 375/72/B/2021-RA dated 28.12.2021 has been filed by Sh. Gourav Sharma, Amritsar, Punjab (hereinafter referred to as the Applicant) against the Order in Appeal No. CC(A)Cus/D-I/Air/1717-18/2021-22 dated 13.10.2021, passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein and upheld the order of the Joint Commissioner of Customs, New Delhi, bearing no. 212/AS/JC/2019 dated 22.08.2019. Original authority had ordered absolute confiscation of 500 gms of gold rods, valued at Rs. 14,40,763/- and 500 gms of gold rods, valued at Rs. 14,40,763/-, concealed inside the baggage trolley of the Applicant and his accomplice, namely, Sh. Ravindra Singh collectively weighing 1000 gms, and valued at Rs. 28,81,526/-, under Section 111(d), 111(i), 111(j), 111(l), 111(m) and 111(o) of the Customs Act, 1962. Besides penalty of Rs. 4,50,000/- was imposed on the Applicant under Section 112 & 114AA of the Act, ibid. A demand of Customs duty @ 38.5%, amounting to Rs. 2,71,730/- along with interest, on gold weighing 250 gms, valued at Rs. 7,05,791/- for past clearance, as admitted by Applicant, was also confirmed.

2. The brief facts of the case are that the Applicant along with his accomplice arrived, on 05.12.2018, at the IGI Airport, from Bangkok. The Applicant and his accomplice were intercepted after they had already crossed the Customs Green Channel. Upon search, two silver coated gold rods weighing 500 gms, valued at

Rs.14,40,763/-, each were recovered from the Applicant and his accomplice, concealed inside baggage trolleys carried by them. The Applicant, in his statement dated 06.12.2018, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of two silver coated gold rods and submitted that the same did not belong to him; that these were handed over to him by one Sh. Balbir Singh at Bangkok; and that he did not have any bill or documentary evidencing licit possession of recovered gold rods. The Applicant further stated that he had been working as Supervisor in a restaurant (named Mama Restaurant) in Bangkok and Sh. Balbir Singh was the owner of said restaurant; and that Sh. Balbir Singh had instructed him not to declare the subject gold rods at Red channel and offered him Rs. 15,000/- along with to and from tickets. The Applicant admitted that he was acting as a carrier only on the instruction of Sh. Balbir Singh to earn quick money. The Applicant further admitted that he had brought 250 gms of gold in his previous visit on 28.11.2018, by concealing the same inside the baggage trolley and cleared the same without paying customs duty.

3. The revision application is filed, mainly, on the grounds that the Applicant was falsely implicated in the case due to some alteration with the concerned Customs Officers; that nothing incriminating was recovered from the possession of the Applicant; that he had already retracted from his so-called voluntary statement under Section 108 of the Customs Act, 1962; that heavy penalty of Rs.4,50,000/- has been imposed on the Applicant for alleged recovery on 06.12.2018; that in view

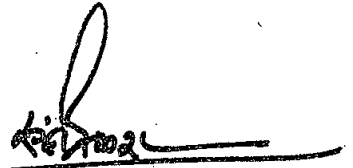
of the financial conditions and family responsibility, the penalty may be reduced; that the Applicant had not indulged in any smuggling activities on his past visit and, therefore, he is not liable to pay any duty or penalty for alleged smuggling on his previous visit.

4. A personal hearing, in virtual mode, was held on 06.07.2022. Ms. Sangita Bhayana, Advocate, appeared for the Applicant and reiterated the contents of RA. She submitted that the offending gold does not belong to the Applicant and he is not claiming it nor challenging the absolute confiscation. However, as he was merely a carrier and a poor person, penalty may be reduced. No one appeared for the respondent department nor has any request for adjournment been received. Hence, it is presumed that the department has no submissions to make in the matter.

5. The Government has examined the matter carefully. In view of the averments made during the course of personal hearing only issue that survives for consideration is whether the penalty imposed on the Applicant is just and fair in the facts and circumstances of the case. In this regard, it is the contention of the Applicant that nothing was recovered from him and he has been falsely implicated in the case. However, the Government finds that this contention of the Applicant is belied by the Panchnama proceedings. Further, the Applicant had in his statement, tendered under Section 108, admitted to his act of smuggling on this occasion as well as in the past. Though this statement is stated to have been retracted, the admissions

made therein are corroborated by Panchnama proceedings as well as the statement of the accomplice. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra Vs. UOI {1997(89)ELT646(SC)}, held that a confession statement made before a Customs officer, though retracted within six days, is an admission and binding. Thus, there is no doubt that the Applicant is liable to penalty under Section 112 and Section 114AA for his acts of omission and commission. The Government observes that the gold was attempted to be smuggled by the Applicant by concealing inside the baggage trolley carried by him. The Applicant has also admitted that he was not the owner of the confiscated gold. Thus, after due consideration of all aspects and specifically keeping in view the ingenious manner of concealment, the Government finds that the penalty of Rs. 4,50,000/- imposed by the original authority, as upheld by the Commissioner (Appeals), is just and fair.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Gourav Sharma,  
S/o Sh. Ramesh Sharma,  
R/o 166, Ram Nagar Colony, Gali No.8,  
Islamabad, Amritsar, Punjab-143001

Order No. 213 /22-Cus dated 07-07-2022

Copy to:

1. The Commissioner of Customs (Appeals), New Customs House, New Delhi-110037;

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2. The Commissioner of Customs, IGI Airport, New Delhi;
3. Ms. Sangita Bhayana, Chamber No.707, LCB-III Delhi High Court, New Delhi-110001.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

*G. Shaha*  
07/07/22

ATTESTED

**गुलशन शेटिया / Gulshan Shatia**  
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