

SPEED POST



F. No. 375/58/B/2021-RA  
F. No. 375/59/B/2021-RA  
F. No. 375/60/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..13/7/22

Order No. 226-228/22-Cus dated 13-07 - 2022 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 Applications filed, under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. CC(A)Cus/D-I/Airport/97-99/2021-22 dated 24.06.2021, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicants : 1. Sh. Kiratpal Singh, New Delhi.  
2. Sh. Balpreet Singh Bal, New Delhi.  
3. Sh. Tejpal Singh Gauri, New Delhi.

Respondent : The Commissioner of Customs, IGI Airport, New Delhi.

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**ORDER**

Three Revision Applications, bearing Nos. 375/58/B/2021-RA, 375/59/B/2021-RA, 375/60/B/2021-RA, all dated 18.11.2021, have been filed by Sh. Kiratpal Singh, New Delhi (hereinafter referred to as the Applicant-1), Sh. Balpreet Singh Bal, New Delhi (hereinafter referred to as the Applicant-2) and Sh. Tejpal Singh Gauri, New Delhi (hereinafter referred to as the Applicant-3), respectively, against the Order-in-Appeal No.CC(A)Cus/D-I/Airport/97-99/2021-22 dated 24.06.2021, passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Additional Commissioner of Customs, IGI Airport, New Delhi, bearing no. 238/Adjn/2017 dated 20.10.2017, wherein, gold rings, collectively weighing 1280 Gms and valued at Rs. 31,71,699/-, were confiscated absolutely along with the concealing material. Penalties of Rs. 6,00,000/-, each were also imposed on the Applicant No. 1, 2 and 3, respectively, under Sections 112 and 114AA of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant-1 arrived at IGI Airport, New Delhi, from Bangkok, on 07.02.2016. He was intercepted by the Customs officers at exit gate after passing through the green channel without submitting any declaration under Section 77 of the Customs Act, 1962. Consequent upon interception of the Applicant-1, the Customs officers, at the instance of Applicant-1 also intercepted Applicant-2 and Applicant-3. On personal search and search of checked-in-baggage of Applicant-1 and Applicant-2, silver coated gold rings, weighing 620 gms, valued at Rs. 15,36,292/- and those weighing 660 gms, valued at Rs. 16,35,407/-, concealed in the specifically designed cavity in chit buttons of jackets, were recovered from the Applicant-1 and Applicant-2, respectively. In their statements dated 08.02.2016, tendered under Section 108 of Customs Act, 1962, the Applicant-1&2 admitted the recovery of the said gold items from them. They further revealed that the subject gold rings were given to them by the Applicant-3 in Bangkok; that the recovered gold belonged to three of them; that Applicant-3's younger brother had provided the funds for purchase of gold; and that they carried Euros 10000 and 14500, respectively to Bangkok for this <sup>purpose</sup> ~~purchase~~. The Applicant-3 also <sup>is</sup> admitted the recovery of the gold rings and their purchase in Bangkok from

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the funds arranged by his younger brother which they all carried from India. The Applicant-2, vide letter dated 09.02.2016, retracted his statement and submitted that the Customs department made a wrong case against him and took statement without letting him read properly and that he was pressurised to sign papers. However, when summoned again none of the Applicants appeared before the officers and, thus, did not join investigations. The original authority, vide the Order-in-Original dated 20.10.2017, confiscated absolutely the seized gold rings. Penalties, as mentioned in Para 1 above, were also imposed on the Applicants under Section 112 and 114AA of the Customs Act, 1962. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which have been rejected.

3. The instant revision applications have been filed by the Applicants-1&2, mainly, on the grounds that the gold was not concealed; that Applicants-1&2 are the owners of gold items; that gold is not a prohibited item, and, that the offending gold items should be released on payment of redemption fine or re-export may be allowed. The Applicant-3 has filed the revision application, mainly, on the grounds that gold was not found from him but from his relatives;

that the Applicant had no intention to smuggle the impugned gold items; that his relatives had already owned the seized goods. It is also pleaded that a token penalty may be imposed. Written submission dated 08.07.2022 has been filed by the Applicant-3 along with the copy of the retraction filed by him on 09.02.2016.

4. Personal hearing was fixed for 08.06.2022, 24.06.2022 and 08.07.2022.

In the personal hearing held, on 08.07.2022, in virtual mode, Ms. Prabhjyoti Kaur, Advocate, appeared for the Applicants. She stated that:

- (i) Sh. Kiratpal Singh & Sh. Balpreet Singh Bal admittedly attempted to smuggle gold, which fact is admitted. However, they do not claim the gold and request that a lenient view may be taken.
- (ii) Sh. Tejpal Singh was not involved in the smuggling nor any gold was recovered from him. He has also retracted his statement. Hence, no penalty is imposable upon him under Sections 112 & 114AA.

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No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. It has been admitted during the personal hearing that Applicant-1&2 attempted to smuggle the gold but they do not claim it. Hence, the request made for redemption need not be considered. As such, only question that remains for consideration is the penal liability of the Applicants.

5.2 As far as the Applicant-1&2 are concerned, they have admitted to smuggling. Hence, there is no manner of doubt that they are liable to penalty under Section 112 for making the goods liable to confiscation and under Section 114AA for knowingly making a false and incorrect declaration. Further, keeping in view the facts and circumstances of the case, the quantum of penalty imposed is just and fair.

5.3.1 As regards, Appliant-3, his contention is that gold was not recovered from him and that penalty under Section 114AA is not imposable on him. As per the Panchnama proceedings and the statements tendered by the three Applicants, it is evident that funds to purchase smuggled gold were arranged by the younger brother of Applicant-3. It is the Appliant-3 who carried part of the funds to Bangkok to buy the gold and handed over the jackets, wherein the gold was concealed, to the Appliant-1&2. Further, it is at the instance of Appliant-1 that the Customs officers apprehended the Appliant-2&3 and recovered a part of offending goods from the Appliant-2. Thus, it is apparent that the three Applicants were in cohorts and the Appliant-3 played an active role in smuggling. As regards, the retraction filed by the Appliant-3, it is evident that the statements of the Applicant-1,2&3 corroborate each other's version. Further, the fact that the Appliant-3 was apprehended at the instance of Applicant-1 and relevant sequence of events recorded in the Panchnama also substantiate the involvement of Applicant-3. It is also noted that after their initial statements, the Applicants failed to join investigations. Hence, an adverse view needs to be taken on this count. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646

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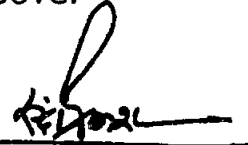
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(SC)}, held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction. In the presence case, the Applicant has admitted his involvement in the case of smuggling in association with his younger brother and Appliant-1&2. The admissions made are corroborated by other material on record, as discussed hereinabove. Therefore, there is no doubt that the statements tendered were voluntary. As such the culpability of the Appliant-3 is well established.

5.3.2 The Appliant-3 has contended that penalty under Section 114AA is not imposable upon him as he had nothing to declare before the Customs officer at the time of his interception. This contention merits consideration. Therefore, keeping in view the facts and circumstances of the case and role played by the Applicant-3, the penalty imposed on him is reduced to Rs. 5,00,000/-.



6. In view of the above, the revision applications are rejected, except to the extent of reduction in penalty imposed on Appliant-3, as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. Sh. Kiratpal Singh, S/o Sh. Amritpal Singh,  
R/o F-57, Mangal Bazaar,  
Vishnu Garden, New Delhi-110018.
2. Sh. Balpreet Singh Bal, S/o Sh. Manjeet Singh,  
R/o WZ-220/35, J-Block,  
Vishnu Garden, New Delhi-110018.
3. Sh. Tejpal Singh Gauri, S/o Sh. Gurbhajan Singh,  
R/o B-96, 1<sup>st</sup> Floor, Fateh Nagar,  
Jail Road, New Delhi-110018

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Copy to:

1. The Commissioner of Customs, Airport & General, IGI Airport, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi-110037.
3. The Joint/ Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037.
4. Ms. Prabhjyoti Kaur, Advocate, G-16, 2<sup>nd</sup> Floor, Lajpat Nagar-1, New Delhi-110024.
5. PA to AS(RA).
6. Guard File.
7. Spare Copy

ATTESTED  
20/07/22  
[Signature]  
[Stamp: Additional Secretary to the Government of India, Customs & Excise, Department of Revenue, Ministry of Finance, Room No. 002, 2nd Floor, B-4/10, Metro Vihar Building, New Delhi-110002]