

REGISTERED
SPEED POST



F.No. 375/25/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... 21/10/21

Order No. 232./21-Cus dated 21/10/2021 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 filed, under Section 129 DD of
the Customs Act 1962 against the Order-in-Appeal
No. CC(A)/Cus/D-I/Air/757/2018 dated 06.03.2019,
passed by the Commissioner of Customs (Appeals),
New Delhi.

Applicant: Sh. Jatinder Pal Singh, Karnal.

Respondent: Commissioner of Customs, IGIA, New Delhi.

ORDER

A Revision Application No.375/25/B/2019-RA dated 22.04.2019 has been filed by Sh. Jatinder Pal Singh, Karnal (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)/Cus/D-I/Air/757/2018 dated 06.03.2019, passed by the Commissioner of Customs (Appeals), New Delhi, whereby Commissioner (Appeals) has upheld the Order-in-Original No. 264/AS/JC/2018 dated 31.05.2018 passed by the Joint Commissioner of Customs, IGI Airport, New Delhi vide which a penalty of Rs. 3.5 lakhs also imposed on the Applicant under Section 112 and 114A of the Customs Act, 1962.

2. The brief facts of the case are that one Sh. Ramesh Chander arrived, on 25.08.2017, at the IGI Airport, New Delhi from Birmingham, UK. He was intercepted as he was approaching the exit gate of the airport. On his personal search and search of his baggage, 02 pcs of gold bars of 995 purity, in the shape of open-ended rough circles, collectively weighing 999 grams and valued at Rs. 27,20,547/-, were recovered. He could not provide any document evidencing the licit possession/import of the recovered items. Sh. Ramesh Chander, in his statements, recorded under Section 108 of the Customs Act, 1962, admitted the concealment and recovery of the confiscated items. He also admitted that the recovered gold belonged to him; that he knew that import of gold attracts customs duty which he wanted to evade to maximize his profit; and that the Applicant herein had given him the idea of importing gold into India without payment of duty. The

Applicant, in his statement recorded on 11.09.2017, inter-alia stated that he knew Sh. Ramesh Chander. The Joint Commissioner of Customs, vide the Order-in-original dated 31.05.2018, ordered absolute confiscation of gold items weighing 999 gms under Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962 and imposed a penalty of Rs. 3,50,000/- each on Sh. Ramesh Chander and the Applicant herein. The Appeal filed by the Applicant has been rejected by the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that the Applicant had no connection with the gold imported by Sh. Ramesh Chander. The gold was not owned by him and he was implicated in the case only on the basis of statement of Sh. Ramesh Chander and thus the penalty imposed on him may be set aside.

4. Personal hearing, in virtual mode, was held on 20.10.2021. Sh. D.S. Chadha, Advocate appeared for the Applicant and reiterated the contents of the RA. He highlighted that the gold was not recovered from the Applicant nor has he dealt with it, in any manner. Further, though Sh. Ramesh Chander, who was apprehended with the gold, named the Applicant as the person who gave him the idea to smuggle gold etc., this statement is not corroborated by any other evidence. Sh. Chadha further stated that the Applicant joined the investigation and there is no admission from him in this regard.

Hence, the RA may be allowed. Sh. Rajnish Kumar, Supdt. supported the orders of the lower authorities.

5. The Government has carefully examined the case. Gold bars were attempted to be smuggled by Sh. Ramesh Chander, who, vide his statement tendered under Section 108 Of the Customs Act, 1962, has owned the offending gold. Although he has stated that the Applicant gave him the idea of importing gold into India without payment of duty and that he would have sold this gold to the Applicant herein, however, this statement is not corroborated by the Applicant in his statements. It is also observed that, in his statement dated 07.09.2017, Sh. Ramesh Chander has stated that in case the Applicant "did not meet me then I would have tried to sell the recovered gold to any jeweler/person who would have been ready to purchase the same." Thus, it is apparent even from Sh. Ramesh Chander's version that there was no pre-negotiated and agreed deal between the two. Further, the CDR details indicating that both were in contact with each other several times, before the date of the case and even after the case, have been relied upon by the authorities below to hold that the Applicant was involved in the matter. However, the Government finds that though fact of being in touch telephonically can establish that the individuals concerned knew each other, it is not by itself sufficient to establish that the Applicant was complicit with Sh. Ramesh Chander in smuggling of gold. It is also correctly contended that the gold was admittedly bought and owned by Sh. Ramesh Chander and the Applicant did not deal with the offending goods in any

manner. Therefore, in the overall facts and circumstances of the case, the Government finds that the case against the Applicant is not made out even on preponderance of probability. Hence, the Government holds that the penalty imposed on the Applicant cannot be sustained.

6. The revision application is allowed.


(Sandeep Prakash)

Additional Secretary to the Government of India

Mr. Jatinder Pal Singh,

H. No. 741, Sector 16, Karnal, Haryana-132 001

Order No. _ 232 /21-Cus dated 21/10/ 2021

Copy to:

1. The Commissioner of Customs, IGI Airport, New Delhi.
2. The Commissioner of Customs (Appeals), New Delhi.
3. Sh. D.S. Chadha, Advocate, 92 GF, Block V, Eros garden, Faridabad-121 009.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED


(Ashish Tiwari)

Assistant Commissioner (RA)