

SPEED POST



F. No. 375/37/B/2019-R.A.  
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-110066

Date of Issue.....26/10/21.....

Order No. 240/cus-21 dated 26/10/2021 of the Government of India passed by Sh. Sandeep Prakash, Principal Commissioner & Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. CC(A)/CUS/D-I/Airport/764/ 2018 dated 14.03.2019, passed by the Commissioner of Customs (Appeals), New Delhi.

APPLICANT : Shri Sayyid Hadi Uddyaver, Kasaragod, Kerala.

RESPONDENT : Commissioner of Customs, IGI Airport, New Delhi.

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**ORDER**

A revision Application No. 375/37/B/2019-RA dated 17.05.2019 has been filed by Sh. Sayyid Hadi Uddyaver, Kasargod, Kerala (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Airport/764/2018 dated 14.03.2019 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has upheld the Order-in-Original No. 14-ADJ/2016 dated 27.04.2016 passed by the Additional Commissioner of Customs, New Delhi, wherein 15 Gold Bars (collectively weighing 1749.60 grams), recovered during the personal search of the Applicant (concealed in the red coloured Inverter Battery Charger of Edon Made Model No. CB 50), valued at Rs. 43,53,363/-, have been absolutely confiscated and free allowance has been denied to the Applicant. A penalty of Rs.9,00,000/- under Sections 112(a), 112(b) & 114AA of the Customs Act, 1962, has also been imposed on the Applicant, which has been maintained in appeal.

2. The brief facts of the case are that the Applicant arrived on 25.10.2014, at the IGI Airport, New Delhi, from Doha and was

intercepted by the Customs officers near the exit gate of the arrival hall after he had crossed the Customs Green Channel and was enquired whether he was carrying any dutiable goods to which he answered in negative. The Applicant had not declared anything in column no.9 (Total value of dutiable goods imported) and column no. 10(ii) to 10(iii) in his Indian customs disembarkation slip. On search of his checked-in baggage, a red colour Inverter Battery Charger of Edon Made Model No. CB 50 was found. On unscrewing the Inverter Battery Charger, 15 gold bars were recovered, collectively weighing 1749.60 grams (116.64 grams each), and valued at Rs.43,53,363/-. The Applicant, in his statement dated 25.10.2014, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of gold bars. He also stated that one Riyaz had given him the corrugated box containing the battery charger and told that somebody would contact him at the Coimbatore Airport, take this box from him and give him money for carrying it. It was also stated that he was not aware about the concealment of gold in the said battery charger. The original authority, vide Order-in-Original dated 27.04.2016, confiscated absolutely the gold bars and imposed penalty of

Rs. 9 Lakhs. Aggrieved, the Applicant preferred an appeal before the Commissioner (Appeals), who rejected it, vide the impugned Order-in-Appeal.

3. The instant revision application has been filed, mainly, on the grounds that as the Applicant was a mere carrier who did not know about the concealment of gold in the battery charger; that the penalty imposed under Sections 112(a) and 112(b) is not justified. As there was no misdeclaration on the part of the Applicant, penalty under Section 114AA is also unjustified.

4. Personal hearing was held on 21.10.2021, in virtual mode. Sh. K.M. Suresh Chandran, Advocate, appeared for the Applicant and reiterated the contents of revision application. He submitted that the Applicant was not aware that the gold was concealed in the charger and hence penalty under Section 112(b) and 114AA is not merited. As such the order in appeal may be modified to reduce the penalty imposed. Sh. Rajnish Kumar, Superintendent, appeared for the Respondent department and submitted that the Appellant carried the offending goods admittedly for pecuniary considerations. Therefore, it is incorrect to

contend that he was not aware of the concealment. As such, orders of the lower authorities are just and fair.

5. The Government has examined the matter carefully. The Applicant has only prayed for waiver or reduction in penalty. It is contended that he was not aware of the presence of gold inside the battery charger which was given by someone to him to be handed over to another person at Coimbatore. At the same time, it is an admitted fact that the battery charger was carried for pecuniary considerations. The Government observes that the claim of being ignorant about concealment in the battery charger does not inspire confidence in as much as any prudent person would not carry any goods with unknown contents. The fact that a pecuniary consideration was admittedly offered would have alerted any innocent passenger to inquire further. Further, even if the Applicant was ignorant of concealment, in normal course, he should have declared/reported the dutiable battery charger to the customs authorities, which was never done. Thus, in the totality of facts and circumstances of the case, the Government finds that the Applicant had knowingly carried the offending goods and he was not merely an innocent carrier. As such,

the penalty has been correctly imposed under Sections 112 and 114AA  
ibid.

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

  
(Sandeep Prakash)

Additional Secretary to the Government of India

Shri Sayyid Hadi Uddyaver, S/o Sayyid Pookoya Thangal, R/o  
Mashkoor Manzil, Nadupallam, Morgral Post, Kasaragod, Kerala.

Order No. 240/21-Cus dated 26/10/2021

Copy to:

1. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037.
3. Sh. K.M. Suresh Chandran, Advocate, 9/426, Court Road, Calicut, Kerala-673001.
4. PA to AS(RA).
5. Guard File.
6. spare copy.

ATTESTED

S.O (R. A.)



(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi