

SPEED POST



F. No. 375/11/B/2022-RA  
F. No. 375/12/B/2022-RA  
F. No. 375/13/B/2022-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. 18/8/22

Order No. 273-275/22-Cus dated 18-8-2022 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 Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Air/3885-3890/2021-22 dated 22.11.2021 passed by the Commissioner of Customs (Appeals), New Delhi.
- Applicants : 1. Sh. Rakesh Kumar, New Delhi.  
2. Sh. Ashwani Kumar, New Delhi.  
3. Ms. Simran, New Delhi.
- Respondent : The Commissioner of Customs, IGI Airport, New Delhi.
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**ORDER**

Three Revision Applications bearing nos. 375/11/B/2022-RA, 375/12/B/2022-RA and 375/13/B/2022-RA, all dated 11.03.2022 have been filed by Sh. Rakesh Kumar, New Delhi (hereinafter referred to as the Applicant-1), Sh. Ashwani Kumar, New Delhi (hereinafter referred to as the Applicants-2) and Ms. Simran, New Delhi (hereinafter referred to as the Applicant-3), respectively, against the Order-in-Appeal No. CC(A)Cus/D-I/Air/3885-3890/2021-22 dated 22.11.2021, passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Additional Commissioner of Customs, IGI Airport, New Delhi, bearing no. 109/Adj/2018 dated 23.03.2018, wherein, gold totally weighing 10,672.70 gms, collectively valued at Rs. 2,59,68,813/-, recovered from possession of Ms. Parveen Rani, Ms. Raj Rani and also from Ms. Simran i.e., Applicant-3, was confiscated absolutely under Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. Penalty of Rs. 17,01,000/- was also imposed on each of the Applicant-1&2, under Section 112(a)(i), 112(b)(i), 114AA and, whereas a penalty of Rs. 17,01,000/- was imposed on Applicant-3 under Section 117 of the Act, *ibid*.

2. Brief facts of the case are that a specific information was received by the officers of DRI, New Delhi, which indicated that six passengers, including Applicant-1, 2 and 3 arriving, on 05.04.2015, at IGI Airport from Bangkok and carrying gold. All the six passengers including Applicant-1, 2 and 3 were intercepted by the officers of DRI, after they had already crossed the Green Channel. During personal search of the passengers including Applicant-1, 2 and 3, nothing incriminating was recovered from the Applicant-1. However, four invoices of gold, all dated 04.04.2015 of GSM Future Import Export Company Limited, Bangkok, were recovered from the Applicant-2. Further, out of total recovery of cut pieces of gold bars weighing 10,672.70 gms, gold weighing 3513.50 gms, valued at Rs. 85,49,048/- was recovered from the Applicant-3. In their respective statements dated 05.04.2015, tendered under Section 108 of Customs Act, 1962, the

Applicants admitted the recovery of gold and the fact that the offending gold did not belong to them and was handed over to them by one Sh. Jitender, in Bangkok with the instruction to conceal the same in small purse inside the hidden pockets of jeans worn by Applicant-3 and other co-passengers to avoid detection by Customs; that earlier also they had brought gold and cleared the same by concealing it in similar manner; that gold items were not declared intentionally at Red channel to evade Customs duty. The original authority, vide the aforesaid Order-in-Original dated 23.03.2018, confiscated the gold absolutely and imposed penalty as mentioned in para 1, above. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which were rejected in case of Applicant-1&2, whereas the appeal filed by the Applicant-3 was partly allowed to the extent of reduction in penalty imposed to Rs. 1,00,000/-.

3. The instant revision applications have been filed by the Applicants-1 and 2, mainly, on the grounds that the Applicants acted as carrier and were not aware of the consequences of clearance of gold in concealed manner, without payment of duty; that penalty imposed on the Applicants, under Section 112(a)(i), 112(b)(i) and 114AA of the Customs Act, 1962 may be set aside. Applicant-3 has contended that she was minor at the time of incident and had carried gold at the instructions of her mother, without any knowledge. Therefore, the penalty imposed under Section 117 may be set aside.

4. Personal hearing was fixed on 15.07.2022, 29.07.2022 and 18.08.2022. In the hearing held on 18.08.2022, in virtual mode, Sh. Amit Attri, Advocate, appeared for the Applicants and reiterated the contents of respective revision applications. He highlighted the following:

- (i) Applicant Sh. Rakesh Kumar is an auto driver and nothing incriminating was recovered from him;
- (ii) Applicant Sh. Ashwani Kumar is also a person of poor means;
- (iii) Ms. Simran was only 14 years old at the time of interception and had carried the bags containing gold at the instructions of the deceased mother.

Therefore, these are fit cases for reduction of penalty.

Sh. Mahender Singh, Superintendent appeared for the department and supported the orders of lower authorities. He also highlighted that the Applicants are repeat offenders as admitted by them in their statements.

5.1 The Government has carefully examined the matter. Only issue that is under challenge in these revision applications is the penalty imposed on the Applicants. The confiscation of gold has not been challenged and, therefore, the matter has attained finality to this extent.

5.2 The Appliant-1 was admittedly involved in smuggling. Thus, he is liable to penalty under Section 112, *ibid*. It has been, however, 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. It is observed that there is no recovery made from the Applicant-1. Therefore, this contention merits consideration. As such, keeping in view the facts and circumstances of the case and role played by the Applicant-1, the penalty imposed on him is reduced to Rs. 10,00,000/-.

5.3 The Appliant-2 has admitted his role in smuggling of offending goods. He contended that he is a poor person and abetted in the act of gold smuggling. The invoices evidencing purchase of gold were recovered from his possession. Thus, it is apparent that the Applicant-2 had played an active role in smuggling. However, keeping in view the facts and circumstances of the case, the penalty imposed on Applicant-2 is reduced to Rs. 12,00,000/-.

5.4 The offending goods were recovered from the Applicant-3. However, she has only been penalized under Section 117 *ibid*, keeping in view the fact that she was a minor and had acted on the instructions of her elders. The Commissioner (Appeals) has already reduced the penalty imposed upon the Applicant-3. Hence, the OIA does not merit intervention on this account.

6. In view of the above, the revision applications filed by Applicant-1&2 are partly allowed to the extent of reduction in penalty imposed on Applicant-1&2, as above. The revision application filed by the Applicant-3 is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. Sh. Rakesh Kumar,  
S/o Sh. Kasturi,  
R/o T-65, Jain Colony, Part-1,  
Uttam Nagar, New Delhi-110059.
2. Sh. Ashwani Kumar,  
S/o Sh. Charanjeet Singh,  
R/o RZ-35, Subhash Park, Extn-II, Gali No. 2,  
Uttam Nagar, New Delhi-110059.
3. Ms. Simran,  
D/o Sh. Rakesh Kumar,  
R/o T-65, Jain Colony, Part-1,  
Uttam Nagar, New Delhi-110059.

Order No. 273-275/22-Cus dated 18-8-2022

Copy to:

1. The Commissioner of Customs, IGI Airport, New Delhi.
2. The Commissioner of Customs (Appeals), NCH, New Delhi.
3. Sh. Amit Attri, Advocate, Chamber No. 952, Patiala House Court, New Delhi-110031.
4. PA to AS(RA).
5. ~~Guard File.~~
6. Spare Copy.

ATTESTED



(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