

**SPEED POST**



F. No. 375/25/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 23/8/22

Order No. 279/22-Cus dated 23-08-2022 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/4062-4065/2021-22 dated 11.02.2022 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Sh. Prem Chand Gupta, New Delhi.

Respondent : The Commissioner of Customs (Airport), New Delhi.

**ORDER**

A Revision Application No. 375/25/B/2022-RA dated 24.05.2022 has been filed by Sh. Prem Chand Gupta, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/4062-4065/2021-22 dated 11.02.2022 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original passed by the Additional Commissioner of Customs, IGI Airport, New Delhi, bearing no. 216/Adjn./2018 dated 27.04.2018, wherein, five numbers of gold bars totally weighing 5000 gms, valued to Rs.1,36,55,000/-, recovered one person namely Sh. Vinod Khanna, were confiscated absolutely under Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. Besides that, penalty of Rs. 27,31,000/- was also imposed on each of the noticees, i.e., Sh. Vinod Khanna, Sh. Inder Prakash Kohli @ Babbu Kohli, Sh. Nagesh Chaddha, Sh. Syed Zainul Hassan and the Applicant herein, under Section 112(a) & (b) and 114AA of the Act, *ibid*. Also, penalty of Rs. 13,70,000/- was imposed on Sh. Anuj Kumar and Sh. Hari Sharan Khanna under Section 112(a) and (b) of the Customs Act, 1962.

2. Brief facts of the case are that, DRI officers followed a passenger namely Sh. Vinod Khanna (Person-1) who arrived, on 20.06.2014, at IGI Airport, New Delhi, from Dubai. When he had come out of exit gate of Arrival Hall of IGI Airport, he met another person namely, Sh. Hari Sharan Khanna who had come to receive him in Visitor's Gallery at which stage the DRI officers intercepted both of them. On being asked as to whether the passenger Sh. Vinod Khanna was carrying gold or had anything dutiable, he replied in negative. The Customs Declaration Form was obtained from Customs wherein he had not declared any dutiable goods carried by him. However, on persistent enquiry the passenger Sh. Vinod Khanna admitted that he had smuggled 5 Kg gold bars from Dubai and was to deliver the same to one Sh. Inder Prakash Kohli @ Babbu Kohli, through Sh. Hari Sharan Khanna who had come to receive him at the airport. During search, 5 packets wrapped with black colour adhesive tapes containing 1 kg gold bar each, were recovered from the

hand carried brown colour bag. The said gold, valued at Rs. 1,36,55,500/-, was seized under Section 110 of the Customs Act, 1962. In his statement dated 20.06.2014, tendered under Section 108 of the Customs Act, 1962, the passenger Sh. Vinod Khanna admitted that the gold bars weighing 5 Kg, valued at Rs. 1,36,55,000/- were recovered from him and admitted that the gold bars did not belong to him; that as per instructions of Sh. Inder Prakash Kohli @ Babbu Kohli, he had gone to Dubai and the expenses for travel were met by Sh. Inder Prakash Kohli @ Babbu Kohli and he was directed to deliver the gold bars to Sh. Hari Sharan Khanna, an employee of Sh. Inder Prakash Kohli @ Babbu Kohli, who came to pick him up from the airport; that he received Rs. 15,000/ to 20,000/- for smuggling of the gold bars and he had also previously brought gold into India twice for Sh. Inder Prakash Kohli @ Babbu Kohli; that he admitted his mistake of acts of omission and commission on his part for having brought the gold illegally for others and not declaring it at Red Channel to evade Customs duty. In his statement dated 20.06.2014, Sh. Hari Sharan Khanna, stated that Sh. Inder Prakash Kohli @ Babbu Kohli had sent the passenger Vinod Khanna to Dubai and provided tickets and vehicle. He confirmed that he knew the passenger was carrying gold and he had been sent to Airport to receive and escort the passenger as per directions of Sh. Inder Prakash Kohli @ Babbu Kohli. In his statement dated 20.06.2014, Sh. Inder Prakash Kohli @ Babbu Kohli, stated that gold smuggling into India through the passenger Sh. Vinod Khanna was done on his directions; that the gold belonged to three persons, namely Sh. Syed Zainul Hasan, the Applicant and Sh. Nagesh Chaddha, who had arranged money overseas through hawala for purchase of gold. In his statements dated 09.07.2014 and 10.07.2014, tendered under Section 108 of the Customs Act, 1962, the Applicant stated that he paid Rs. 40 lakhs for smuggling of gold to Sh. Inder Prakash Kohli @ Babbu Kohli through Sh. Nagesh Chaddha; that the same was done to fetch profit of Rs. 2.0 lakhs per Kg.; that the same was done by Sh. Nagesh who paid Rs. 60 lakhs to Sh. Inder Prakash Kohli @ Babbu Kohli for smuggling of gold into India. The original authority, vide the aforesaid Order-in-Original dated 27.04.2018, confiscated absolutely the recovered gold, under Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. Penalty as mentioned in para 1, were imposed on each of the noticee under Section 112 (a), 112(b) and 114AA of the Customs

Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The instant revision application has been filed, mainly, on the grounds that the ADG, Directorate of Revenue Intelligence has no jurisdiction as per the judgment of the Hon'ble SC in the case of M/s Cannon India Pvt. Ltd. and reported in 2021(376)ELT3(SC) to issue show cause notice case and the same is liable to be quashed; that the Commissioner (Appeals) erred in passing the OIA on the grounds that the Applicant had neither filed any reply to SCN nor appear for personal hearing before the original authority; that the request for cross-examination of the Sh. Inder Prakash Kohli @ Babbu Kohli and Sh. Nagesh Chaddha was not discussed at all in OIO as well as in OIA; that the Applicant had no knowledge about the instant alleged act of smuggling; that penalty under Section 114AA is not imposable upon him; and that the impugned OIA may be set aside.

4. Personal hearings were fixed on 27.07.2022 and 18.08.2022. In the personal hearing, held on 18.08.2022, in virtual mode, Sh. L. B. Yadav, Consultant, appeared for the Applicant and requested that written submissions emailed on 18.08.2022 may be taken on record. He reiterated submissions made in the RA and the written submissions dated 18.08.2022. Sh. Mahender Singh, Supdt. appeared for the department and supported the orders of the lower authorities.

5. The Government has carefully examined the matter. It is contended that OIA has been passed on erroneous findings that the Applicant herein had not joined the proceedings before the original authority. The Government observes that the Commissioner (Appeals), in para 5.7 of the OIA, has recorded as under:

" 5.7 I also note that the Appellant No. 3 neither filed any reply to show cause notice nor did he appear for personal hearing before the adjudicating authority. This is evident from para 41 and 42 of the impugned order. Evidently he did not have anything to defend

himself. The statement of the Applicant himself which get corroborated with statements of other persons as well as call details clearly establishes his guilt. I am in agreement with the findings of the adjudicating authority that the Applicant was the intended recipient of the smuggled gold and was thus liable for personal action."

To the contrary, it is observed that the original authority, in Para 41 (B) (Records of Written submissions) and Para 42 (C) (Records of Personal Hearing) of order-in-original, has specifically recorded the written and oral submissions made on behalf of the Applicant herein, who was Noticee No. 5 in the show cause notice. Thus, the Commissioner (Appeals) has recorded his findings against the Applicant herein based on incorrect facts. As such, it would be in the interest of justice that the matter is remanded to the Commissioner (Appeals) for deciding the appeal filed by the Applicant herein afresh, after following the principles of natural justice. All issues raised are kept open for decision afresh.

6. The revision application is, accordingly, allowed by way of remand to the Commissioner (Appeals), with directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Prem Chand Gupta,  
S/o Late Sh. Ramkaran Gupta,  
R/o F-1/14, Model Town-II,  
New Delhi.

Order No. 279 /22-Cus dated 23-08-2022

Copy to:

1. The Commissioner of Customs, T-3, IGI Airport, New Delhi-110037.
2. The Commissioner of Customs (Appeals), NCH, New Delhi-110037.
3. Sh. Piyush Kumar & Associates, Advocate, B-25, Lajpat Nagar-III, New Delhi-110024.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

**AHESKED**  
**2022/08/23**  
अश्वनी कुमार लॉ / Ashwan Kumar Law  
अधीक्षक / Superintendent (R.A. Unit)  
राजस्व विभाग / Department of Revenue  
वित्त मंत्रालय / Ministry of Finance  
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