

SPEED POST



F.No. 372/31/B/2019-RA
372/33/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. 23/12/21.

Order No. 294-295/21-Cus dated 23-12-2021 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 Orders-in-Appeal No. 60/Pat/Cus/Appeal/17 dated 06.10.2017 and 97/Pat/Cus/Appeal/17 dated 17.11.2017 passed by the Commissioner (Appeals), Customs, CGST & CX, Patna.

Applicant : Sh. Chandlal Gupta, Kolkata.

Respondent : Commissioner of Customs (Preventive), Patna.

ORDER

Two Revision Applications, bearing Nos. 372/31/B/2019-RA dated 24.07.2019 and 372/33/B/2019-RA dated 12.07.2019, have been filed by Sh. Chandlal Gupta alias Chandu Gupta, Kolkata (hereinafter referred to as the Applicant) against the Orders-in-Appeal Nos. 60/Pat/Cus/Appeal/17 dated 06.10.2017 and 97/Pat/Cus/Appeal/17 dated 23.11.2017 passed by the Commissioner (Appeals), Customs, CGST & CX, Patna. Commissioner (Appeals) has upheld the Orders-in-Original Nos. 34/Cus/JC/GIA/2016 and 33-Cus/JC/GIA/2016, both dated 29.01.2016, passed by the Joint Commissioner of Customs (P), Patna wherein, 02 pieces of gold slabs, collectively weighing 1499.860 gms and valued at Rs. 40,88,555/-, and 04 pieces of gold slabs plus one piece of gold chain, collectively weighing 4227.800 gms and valued at Rs. 1,14,02,882/- were confiscated absolutely under Section 111(a), 111(d) and 111(l) and 111(o) of the Customs Act, 1962. Penalties of Rs. 12 Lakhs and Rs. 30 lakhs were also imposed on the Applicant, under Sections 112(a) and 112(b) of the Customs Act, 1962.

2. Brief facts of the case are that, on 11.12.2014, based on specific information, one Sh. Vipin Gupta was apprehended at Gaya International Airport, while travelling from Bangkok to Varanasi via Gaya, carrying 4227.800 grams of gold comprising of four 1 kg slabs and one chain. The total value of the recovered gold was assessed at Rs. 1,14,02,882/-. Sh. Vipin Gupta, in his statement dated 11.12.2014, tendered under Section 108 of Customs Act, 1962, stated that his cousin, Sh. Chandlal Gupta, the Applicant herein, had sent him to Bangkok

with a direction to collect the gold from one Sabir Bhai and hand it over to him (the Applicant) at Kolkata. The original authority confiscated the gold absolutely, vide OIO No. 33-Cus/JC/GIA/2016 dated 29.01.2016. Penalty of Rs. 30 Lakhs each was imposed on Sh. Vipin Gupta and on the Applicant. Further, as Sh. Vipin Gupta was being handed over to jail authorities at Patna after being arrested, 02 pieces of gold slabs, collectively weighing 1499.860 grams, valued at Rs. 40,88,555/-, were recovered upon his search at the entry gate of the jail. Sh. Vipin Gupta, in his statement dated 12.12.2014, tendered under Section 108 of the Customs Act, reiterated the facts already divulged in his earlier statement dated 11.12.2014, about the ownership of the recovered additional gold. The additional recovered gold was also confiscated absolutely by the original authority vide OIO No. 34/Cus/JC/GIA/2016 dated 29.01.2016 and a penalty of Rs. 12 Lakhs was imposed on the Applicant. Aggrieved, the Applicant filed appeals before the Commissioner (Appeals), who, vide the impugned Orders-in-Appeal, has rejected the same.

3. The instant revision applications have been filed, mainly, on the grounds that the Applicant had been implicated in this case without any corroborative evidence supporting the statements of Sh. Vipin Gupta. The two statements given by Sh. Vipin Gupta were incoherent. The penalty imposed under Section 112(a) and 112(b) may be waived, accordingly.

4. Personal hearing was granted on 15.11.2021, 06.12.2021 and 22.12.2021. None appeared for the Applicant nor any request for adjournment has been received. Sh. K. K. Pathak, Superintendent, appeared for the department on 06.12.2021 and 22.12.2021, in virtual mode, and supported the orders of the lower authorities. Since sufficient opportunities have been given to the Applicant, the matter is taken up for decision on the basis of records available.

5. The Government has carefully examined the case. The recovery of gold of foreign origin, in both the cases from Sh. Vipin Gupta is not disputed. The contention of the Applicant is that he is not involved with this smuggling and that he has been arraigned only on the basis of statements tendered by Sh. Vipin Gupta, which are not corroborated. The Government observes that:

(i) Sh. Vipin Gupta has, in his statement tendered under Section 108 of the Customs Act, 1962, directly and clearly implicated the Applicant herein and has also elaborated his role as the mastermind.

(ii) It is settled by a catena of judgments of Hon'ble Supreme Court that a statement made before a Customs officer is admissible as evidence. In the case of Romesh Chandra Mehta Vs State of West Bengal [1999 (110) ELT 324 (SC)], a Constitution Bench of Hon'ble Supreme Court has held that proceedings under Section 108 ibid are in the nature of judicial proceedings, within the meaning of Sections 193 & 228 of IPC, and the statements made under such proceedings are

admissible as evidence. Further, in the case of Naresh J. Sukhwani Vs UOI [1996 (83) ELT 258 (SC)], the Apex Court has held that a statement *"is a material piece of evidence collected by Customs Officials under Section 108 of Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provision of Customs Act. The material can certainly be used to connect the petitioner in contravention-----"*.

(iii) There is nothing on record that Sh. Vipin Gupta has retracted his statement at any stage. He also does not appear to have contested the absolute confiscation of the gold seized from him, even at the first appellate stage. This conduct of Sh. Vipin Gupta lends credence to his statements disclosing that he was merely acting as a carrier (for a monetary consideration of Rs. 6000/-) for the Applicant.

(iv) Investigations have brought on record that Sh. Vipin Gupta was closely related to and used to stay with the Applicant. Further, incriminating material was recovered from the premises of the Applicant, including flight tickets of Sh. Vipin Gupta, which indicated his involvement such carriers.

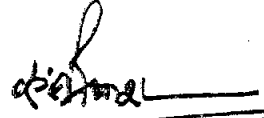
(v) The Applicant failed to join investigations and evaded summons issued under lawful authority. This conduct of the Applicant also indicates his guilty mind.

(vi) The Applicant has failed to join adjudication proceedings before the original authority. Further, despite filing appeal, he failed to appear before the Commissioner (Appeals). Even in the present proceedings, he failed to appear before the Government despite being provided ample opportunities. This

would not have been the case, if the Applicant was acting bonafide.

As such, the culpability of the Applicant in smuggling of large quantities of gold is evident. The case laws cited by the Applicant are not applicable in the facts of this case.

6. In view of the above, the impugned Orders of the Commissioner (Appeals) do not merit revision and the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Shri. Chandlal Gupta alias Chandu Gupta,
166-A, Ahiritolla Street, Hathkhola,
Kolkata – 700 005.

Order No. 294 - 295/21-Cus dated 23-12-2021

Copy to:

1. The Commissioner of Customs (Preventive), Patna, Central Revenue Building, 5th Floor, Birchand Patel Path, Patna-800001.
2. The Commissioner (Appeals), Customs, CGST & CX, Patna, 2nd Floor, C.R. Building (Annexe), Bir Chand Patel Path, Patna – 800001.
3. PA to AS(RA).
4. Guard File.
5. 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