

SPEED POST



F. No. 372/13/B/2020-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...~~03/02/22~~

Order No. 35/22-Cus dated 03-02-2022 of the  
Government of India passed by Sh. 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.  
KOL/CUS(Airport)/KA/143/D/2020 dated  
20.04.2020, passed by the Commissioner of  
Customs (Appeals), Kolkata.

**Applicant** : Sh. Pankaj Kapoor, New Delhi.

**Respondent** : Commissioner of Customs (Airport &  
Admn.), Kolkata

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**ORDER**

A Revision Application No. 372/13/B/2020-RA dated 28.09.2020 has been filed by Sh. Pankaj Kapoor, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS(Airport)/KA/143/D/2020 dated 20.04.2020, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has upheld the order of the Joint Commissioner of Customs, AIU Cell, NSCBI Airport, Kolkata, bearing no. 68/2018-JC dated 27.02.2018, wherein one piece of commercial chain, one piece of finger ring and one piece of commercial bangle, made of 24 carat gold, collectively weighing 240.70 grams and valued at Rs. 7,59,408/-, which were recovered from the Applicant herein, were absolutely confiscated under Sections 111(d), 111(i), & 111(l) of the Customs Act, 1962. Besides, a penalty of Rs.1,00,000/- was also imposed on the Applicant under Sections 112(a) & 112(b) of the Act, *ibid*, which has been maintained in appeal.

2. Brief facts of the case are that the Applicant arrived, on 19.09.2016, at NSCBI Airport, Kolkata from Bangkok and was intercepted while he was passing through green channel after completion of immigration formalities. The Applicant was enquired if he was carrying any contraband goods or gold or

gold items in his baggage or on his person to which he replied that he was carrying few gold items. On further inquiry, the Applicant stated that he knowingly tried to get through green channel and had the customs officers not intercepted him, he would have cleared the gold items without paying customs duty. His personal search revealed one piece of commercial chain, one piece of finger ring and one piece of commercial bangle, made of 24 carat gold, collectively weighing 240.70 grams and valued at Rs. 7,59,408/-, camouflaged with white colour metal plating. The Applicant could not produce any licit documents in support of possession, acquisition or importation of the said gold items. In his statement dated 19.09.2016, tendered under Section 108 of the Customs Act, 1962, the Applicant stated that after completing the immigration formalities, he walked towards the green channel where Customs officer in plain clothes asked him whether he was carrying any contraband goods or gold or gold items in his baggage or on his person to which he replied that he was carrying few gold items; that he was trying to evade customs duty by walking through the green channel; that he bought the said gold items in Bangkok by borrowing some money from his friends in Bangkok and some of the money was his own; that he wanted to sell the goods in India for earning some money for treatment of his daughter; and that he admitted his

mistake. The original authority confiscated the gold items absolutely and imposed a penalty of Rs. 1 Lakh on the Applicant. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who has, vide the impugned OIA, rejected it.

3. The revision application has been filed canvassing that the gold items were declared by the Applicant; that the said gold items were owned by the Applicant and were worn by him at the time of the incident; that, in the circumstances, the gold should be allowed to be redeemed/re-exported on payment of fine under Section 125 of the Customs Act; and that the penalty should be waived or reduced.

4. Personal hearing, in virtual mode, was held on 02.02.2022. Sh. D.S. Chadha, Advocate, appeared for the Applicant and reiterated the contents of the RA. He highlighted that:

- (i) The Applicant was intercepted while he was walking towards Green Channel and not after crossing green channel.
- (ii) The Applicant had confirmed that he was carrying gold ornaments when asked by the Customs officer.

- (iii) There was no concealment. The gold was rhodium plated and not white colour plated.

In the above circumstances, he requested that the gold ornaments may be released on payment of RF, applicable duty and penalty. He also placed on record GOI Order No. 50/2017-Cus dated 15.11.2017 as upheld by the Hon'ble Delhi HC vide Order dated 12.01.2018 in WP(c) 321/2018 to support his case. Sh. Rajaram Meena, Superintendent, appearing for the Respondent department, supported the Orders of the lower authorities.

5. The Government has carefully examined the matter. It is observed that there are certain factual contradictions in the Order passed by the original authority which require appropriate determination before a view could be taken about the culpability or otherwise of the Applicant, including the extent thereof. These are:

- (i) In the opening para of the OIO, it is stated that the Applicant was "*intercepted while he was passing through the green channel.*" In para 7, it is stated with reference to the statement tendered by the Applicant that he was intercepted while "*he walked towards the green channel.*" Thus, it is not clear whether the Applicant was intercepted while walking

towards the green channel or while he was passing through the green channel.

(ii) In the opening para of the OIO, it is stated that "*The passenger was asked whether he was carrying any contraband goods or gold or gold items in his baggage or in his person which he replied that he was carrying few gold items.*" Immediately thereafter it is also stated that "*However, on prolonged enquiry the passenger stated that he was knowingly tried to get through the Green Channel without reporting to the Red Channel for evading customs duty and he would clear the said gold items if he was not intercepted by the Customs Officers at Green Channel.*" Thus, it is unclear whether the passenger on enquiry immediately informed about carrying gold items or whether he did so on prolonged enquiry.

(iii) In the un-numbered para 8 of "Findings And Discussions", the original authority has held that "*the passenger has imported the gold in concealed manner.*" Perhaps this finding is arising out of the position that the goods were "*camouflaged with white colour metal plating*", as stated in opening para of the OIO. The Applicant has on the other hand contended that it was rhodium plating. Thus, this aspect would have to be verified with reference to the records, specifically the Panchnama proceedings and the Test Report of the Chemical Examiner.

In the above light, it is apparent that the matter needs to be examined afresh with reference to the original records.

10. The revision application is, accordingly, allowed by way of remand to the original authority for de-novo consideration, in accordance with principles of natural justice.



(Sandeep Prakash)

Additional Secretary to the Government of India

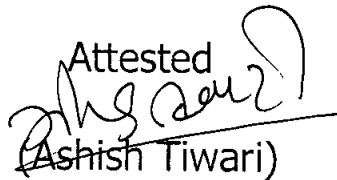
Sh. Pankaj Kapoor,  
C/o Sh. D.S. Chadha,  
G-16, 2<sup>nd</sup> Floor, Lajpat Nagar – I,  
New Delhi – 110024.

Order No. 35/22-Cus dated 03-02-2022

Copy to:-

1. The Commissioner of Customs, Airport & Admin, NSCBI Airport, Kolkata – 700052.
2. The Commissioner of Customs (Appeals), 15/1, 3<sup>rd</sup> Floor, Strand Road, Customs House, Kolkata – 700001.
3. Sh. D.S. Chadha, Advocate, G-16, 2<sup>nd</sup> Floor, Lajpat Nagar – I, New Delhi – 110024.
4. PA to AS(RA).
- ✓ 5. Guard File.
6. Spare Copy.

Attested



(Ashish Tiwari)

Assistant Commissioner (RA)