

SPEED POST



F. No. 372/01/B/2021-R.A.
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 08/03/22

ORDER NO. 80 /22-Cus dated ~~08-03~~ 2022 of the Government of India, passed by Sandeep Prakash, 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. KOL/CUS(AirPort)/AKR/721/2020 dated 19.10.2020, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : Sh. Gajendra Kumar Pandey, Howrah.

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

ORDER

A Revision Application No. F.No. 372/01/B/2021-R.A. dated 21.01.2021 has been filed by Sh. Gajendra Kumar Pandey, Howrah (hereinafter referred to as the Applicant) against Order-in-Appeal No. KOL/CUS(AirPort)/AKR/721/2020 dated 19.10.2020 passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, AIU, NSCBI Airport, Kolkata, bearing no. 09/2019 ADC dated 11.01.2019 whereby one gold bar, weighing 1000 grams and valued at Rs. 29,80,000/-, has been absolutely confiscated. The adjudicating authority has imposed a penalty of Rs. 2,00,000/- under Section 112 (b) on the Applicant herein, which has been maintained in appeal.

2. The brief facts of the case are that one Chandra Deo Shukla arrived on 17.02.2017, at NSCBI Airport, Kolkata from Bangkok and was intercepted near the exit gate while he was passing through the green channel of the Arrival Hall of the airport. On search of his person, one gold bar, weighing 1000 grams and valued at Rs.29,80,000/-, wrapped with black colour carbon paper and further wrapped with black colour adhesive tape was recovered from his pocket. Sh. Chandra Deo Shukla, in his statement dated 17.02.2017, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of gold bar. He further stated that the seized gold bar had been given to him by on Sh. Bajrangi Singh outside Bangkok Airport, to be handed over to a person outside Kolkata airport and he would have got Rs. 35,000/- for this job. During investigations, it was revealed that Sh. Shukla had made many calls to the Applicant from his mobile. The Applicant, in his statement dated 25.04.2017, tendered under Section 108 of the Customs Act,1962, stated that he ran a travel agency and he knew Sh. Shukla as he used to come to his agency for ticketing purpose; that he had prior knowledge that Chandra Deo Shukla would bring about one Kg. of gold; that Sh. Shukla would have handed over the gold to an airline's employee; that the airline employee would hand over the gold to the Applicant; and that the Applicant would finally deliver the gold to a specified person against a consideration of Rs. 10,000/-. The original authority absolutely confiscated the gold and imposed a penalty of Rs. 10 Lakhs on Sh. Shukla and a penalty of Rs. 2 Lakhs on the Applicant vide OIO dated

11.01.2019. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals) which has been rejected.

3. The revision application has been filed, mainly, on the grounds that the first statement of the Applicant herein recorded on 25.04.2017 wherein he had, inter-alia, confessed his role in the smuggling was not his voluntary statement; that in his statement dated 27.04.2017, he had denied any involvement in gold smuggling and stated that he knew Sh. Chandra Deo Shukla only as he used to make air and train ticket for him; that he has been falsely implicated in the case on the basis of a statement dated 16.07.2017 of Junior Customer Agent of Air India, namely, Sh. Dyotimoy Pramanik, wherein Sh. Pramanik had stated that Applicant had called him on 17.02.2017 requested to help his friend, i.e., Sh. Chandra Deo Shukla, who was facing some problem at International Arrival area; that there were no independent material evidences corroborating the earlier confession obtained by the customs officers from him; that the Applicant was neither a passenger nor he smuggled the gold and, therefore, action taken against him has no basis. It has, accordingly, been prayed that the penalty of Rs. 2,00,000/- imposed should be set aside.

4. Personal hearing was held on 04.03.2022, in virtual mode. Smt. Prabhjyot Kaur, Advocate, appeared for the Applicant and reiterated the contents of the revision application. Sh. Dheeraj Kumar, Supdt., appeared for the Respondent department and reiterated the findings of the lower authorities.

5.1 The Government has examined the matter carefully. The issue that is required to be decided is the complicity or otherwise of the Applicant herein in the smuggling of gold by Sh. Chandra Deo Shukla. In his statement recorded on 25.04.2017, the Applicant had admitted/confessed his complicity in the matter. However, subsequently, he retracted the statement dated 25.04.2017 and in another statement, recorded on 27.04.2017, claimed that he knew Sh. Chandra Deo Shukla only as a customer and that he had nothing to do with the smuggling. Thus, for determination of the issue involved, it has to be examined whether the statement dated 25.04.2017

can be relied upon, even though it has been, subsequently, retracted. In this regard, the Government observes as follow:

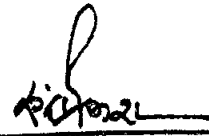
- (i) It is on record that when Sh. Chandra Deo Shukla was intercepted upon his arrival from Bangkok, he called up the Applicant herein for help and the Applicant in turn called up Air India Executive to help Sh. Shukla. It is claimed by the Applicant, now, that he was helping Sh. Shukla only as Sh. Shukla was his customer. However, the matter does not appear to be that simple. If the relationship between the Applicant herein and Sh. Chandra Deo Shukla was only of a customer, and the Applicant had no knowledge/ complicity in the smuggling, the Applicant would not have called the Airline Executive to help when Sh. Shukla was intercepted by the Customs officers. It is also significant that, after being intercepted, Sh. Shukla chose to call Applicant only. Thus, the defence that the relationship between them was purely of a vendor and customer does not wash. No prudent person would seek intervention of third parties for another person in a sensitive matter involving smuggling.
- (ii) If the Customs officers had forcibly recorded the confession on 25.04.2017, there was no need for them to record an exculpatory statement within two days thereafter.
- (iii) In the case of *K.I. Pavunny {1997 (90) ELT 241 (SC)}*, the Hon'ble Supreme Court has held that the confessional statement of accused, if found voluntary, can form the sole basis of conviction. In the present case, the statement made by the Applicant herein on 25.04.2017 appears to be a voluntary statement in the facts of circumstances discussed at (i) & (ii) above.
- (iv) In the case of *Surjeet Singh Chhabra vs. UOI {1997 (89) ELT 646 (SC)}*, the Hon'ble Supreme Court has held that the statement made before a Customs officer can be relied upon even if it was, subsequently, retracted.

5.2 In view of the above, the Government finds that the statement dated 25.04.2017 of the Applicant was his voluntary statement. As such, the complicity of the Applicant in the matter cannot be doubted.

5.3 The case laws relied upon by the Applicant are not applicable in the facts of the present case.

6. A specific contention has been raised alleging non-application of mind by Commissioner (Appeals) as if he has proceeded against Sh. Chandra Deo Shukla and not against the Applicant herein. Certain portions of the impugned Order-in-Appeal have been cited to support this contention. However, the Government finds that the Commissioner (Appeals) has in his order specifically discussed the role of the Applicant herein and, thereafter, proceeded to decide the appeal. His role has been extensively discussed and examined in para-20 of the impugned Order-in-Appeal, including in respect of the admissibility of the confessional statement dated 25.04.2017. Therefore, though, there may be certain drafting mistakes in the impugned order, when read as a whole, the allegation of non-application of mind is not made out.

7. In view of the above, the Government does not find any infirmity in the impugned Order-in-Appeal. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Shri Gajendra Kumar Pandey,
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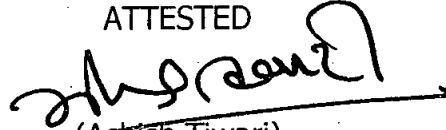
Order No. 80 /22-Cus dated 08-03-2022

Copy to:

1. The Commissioner of Customs(Appeals), 3rd Floor, Custom House, 15/1, Strand Road, Custom House,Kolkata-700001
2. The Addl. Commissioner of Customs, AIUC, NSCBI Airport, Kolkata-700052

3. Sh. S.S. Arora & Associates, Adv., B-1/71, Safdarjang Enclave, New Delhi-110029
4. PA to A.S.(RA)
5. Guard File
6. spare copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (RA)