

SPEED POST



F.No. 375/48/B/2020-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. 30/3/22

Order No. 112/22-Cus dated 30-03-2022 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/605/20-21 dated 05.08.2020 dated passed by the Commissioner of Customs (Appeals), Customs, NCH, New Delhi.

Applicant : Sh. Gautam Jain, Ludhiana.

Respondent : Commissioner of Customs, IGIA, New Delhi.

ORDER

A Revision Application No. 375/48/B/2020-RA dated 26.08.2020 has been filed by Sh. Gautam Jain, Ludhiana, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)/Cus/D-I/Air/605/20-21 dated 05.08.2020 passed by the Commissioner of Customs (Appeals), NCH, New Delhi. Commissioner (Appeals) has upheld the Order-in-Original No. 29/AS/JC/2019 dated 13.02.2019, passed by the Joint Commissioner of Customs, IGIA, New Delhi, whereby, 999 grams of gold, brought illegally by one Sh. Salil Puri, worth Rs. 26,12,855/- was confiscated but was allowed to be re-exported on payment of RF of Rs. 5,30,000/-. A penalty of Rs. 5,30,000/- was also imposed on Sh. Puri. Also, customs duty of Rs. 81,76,000/-, along with interest, was demanded on the earlier gold consignments, admitted to have been imported by Sh. Salil Puri. A penalty of Rs. 16 lakhs was imposed on the Applicant herein and Rs. 5 Lakhs on one Sh. Raman Kumar.

2. Brief facts of the case are that, on 24.12.2017, Sh. Salil Puri along with his wife, Ms. Pratibha Puri arrived at IGI Airport, New Delhi from Dubai and opted for green channel. They were intercepted by the customs officers at the exit gate and diverted for detailed examination. During detailed examination of their baggage, one gold item, crudely given the shape of chain and one gold bar, collectively weighing 999 grams and valued at Rs. 26,12,855/-, were recovered from Sh. Salil Puri. In his statements dated 24/25.12.2017, tendered under Section 108 of the Customs Act, 1962, Sh. Salil Puri admitted that he had brought the recovered gold in concealed manner to evade customs duty; that he had

to sell the gold to the Applicant herein; that he used to purchase US Dollars from one Raman Kumar and send them to Dubai through hawala; and that the Indian currency to purchase foreign currency was collected by Sh. Raman Kumar from the Applicant. Sh. Raman Kumar, in his statement dated 25.12.2017, stated that he delivered US Dollars to the Applicant, who gave him Indian currency. Forensic analysis of the mobile phones of Sh. Salil Puri revealed that he was in touch with the Applicant regarding purchasing and bringing gold into India. It was also revealed that the Applicant was in communication with Sh. Raman Kumar also regarding purchase of US Dollars and fixing their rates etc. The Joint Commissioner of Customs, vide OIO dated 13.02.2019, confiscated the gold items but allowed their re-export on payment of redemption fine of Rs. 5,30,000/-. A penalty of Rs. 5,30,000/- was imposed on Sh. Salil Puri; and duty on gold weighing 2920 grams (valued at Rs. 81,76,000/-) was demanded along with interest. A penalty of Rs. 16 Lakhs was imposed on the Applicant herein and a penalty of Rs. 5 Lakhs was imposed on Sh. Raman Kumar. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, rejected the appeal.

3. The instant revision application has been filed, mainly, on the grounds that the Applicant, in his statement before customs authorities, had denied his involvement; that this statement is admissible as evidence; that statements of the co-accused are not admissible as evidence; that the Applicant had never acquired possession of the gold; and that, therefore, the penalty imposed on the Applicant may be set aside.

4. Personal hearing was held, in virtual mode, on 28.03.2022. Sh. S. S. Arora, Advocate, appeared for the Applicant and reiterated the contents of the RA and Written Submissions dated 25.03.2022. None appeared for the respondent department nor any request for adjournment has also been received. Hence, the matter is taken up for disposal on the basis of records.

5. The Government has carefully examined the case. The only contention of the Applicant is that penalty imposed on him should be set aside as he was not involved in the smuggling and was only named by Sh. Salil Puri in his statement. It has also been averred that in his statement tendered under Section 108 of Customs Act, 1962, he had denied any purchase of gold from Sh. Salil Puri and had also denied having sent foreign currency to Sh. Puri in Dubai.

6. The Government observes that the Commissioner (Appeals) has considered the defence raised by the Applicant in detail but rejected the same based upon forensic analysis of the mobile phone of Sh. Salil Puri as well as on the basis of disclosures made by Sh. Salil Puri and Sh. Raman Kumar. The forensic analysis of the mobile phone and scrutiny of conversation chat data and voice messages revealed that Sh. Salil Puri was communicating with the Applicant herein for purchasing and bringing gold into India at least on three occasions, including in the present case. Sh. Puri has also communicated with the Applicant herein regarding purchase and receiving of Dollars from Sh. Raman Kumar. The Government notes that the forensic analysis was conducted on 26.02.2018. In the meantime, in his statement recorded on 25.12.2017,

the Applicant had denied any transactions with Sh. Salil Puri regarding purchase of gold, dollars etc. After the forensics analysis was conducted, the Applicant was summoned to appear on 22.03.2018 and on 11.04.2018 but he failed to appear. In fact, it is observed that after his initial statement was recorded on 25.12.2017, the Applicant was summoned by the department on 06(six) occasions, but he failed to appear. As such, it is evident that the Applicant made a false statement on 25.12.2017 and thereafter refused to be confronted with the evidence, including the technical evidence, gathered by the department. Therefore, an adverse inference needs to be drawn against the Applicant. Further, the disclosures made by Sh. Salil Puri and Sh. Raman Kumar implicating the Applicant herein are corroborated by the technical evidence. In this light, the impugned OIA does not merit interference, in so far as present Applicant is concerned.

7. The revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

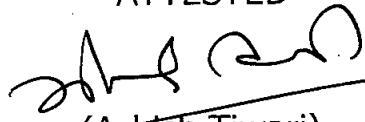
Sh. Gautam Jain,
S/o Sh. Mangat Rai Jain,
R/o house No. 27A, Tagore Nagar, Civil Lines,
Ludhiana, Punjab.

Order No. 112/22-Cus dated 30-03-2022

Copy to:

1. The Commissioner of Customs, IGIA, New Delhi.
2. The Commissioner of Customs (Appeals), NCH, New Delhi.
3. Sh. S. S. Arora, Advocate, BI/71, Safdarjung Enclave, New Delhi-110 029.
4. PA to AS(RA).
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED


(Ashish Tiwari)

Assistant Commissioner (RA)