



F. No. 373/135/B/2019-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. 10/11/23

Order No. 267/23-Cus dated 10-11-2023 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. CAL-EXCUS-000-APP-11-2019 dated 17.01.2019, passed by the Commissioner (Appeals), Central Tax, Central Excise & Customs, Kochi.

Applicant : Shri Abdul Khader, Thalassery, Kannur

Respondent : The Commissioner of Customs (Preventive), Cochin

**ORDER**

A Revision Application No. 373/135/B/2019-RA dated 24.04.2019 has been filed by Shri Abdul Khader, Thalassery, Kannur, Kerala (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CAL-EXCUS-000-APP-11-2019 dated 17.01.2019, passed by the Commissioner (Appeals), Central Tax, Central Excise & Customs, Kochi. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Joint Commissioner of Central Excise, Service Tax & Customs, Calicut, bearing no. 37/2014-15 dated 30.01.2015 vide which the Applicant was penalized for abetting smuggling under Section 112(a) of the Customs Act, 1962.

2. The adjudicating authority vide the aforementioned Order-in-Original had absolutely confiscated the gold bars weighing 2000 grams and valued at Rs.59,20,000/- seized from one Sirajudeen (carrier of impugned items) under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962 (hereinafter referred as the Act); confiscated the material objects i.e. elastic band used for concealing the same, under section 118(a) & 119 of the Act and imposed penalties of Rs. 14,80,000/- each on Sirajudeen and the Applicant under Section 112(a) of the Act for abetting smuggling. A penalty of Rs. 6,00,000/- under Section 114AA of the Act was also imposed on Sirajudeen. Aggrieved, the Applicant has filed this Revision Application.

3. Brief facts of the case are that Sirajudeen, who was the carrier of impugned goods, arrived on 18.09.2013 at Calicut International Airport from Dubai. He was intercepted by the Senior Intelligence Officer, Directorate of Revenue Intelligence, Calicut (hereinafter referred to as "SIO, DRI") on intelligence that he is likely to carry high valued foreign origin goods in his baggage. A body search revealed two yellow bars of gold 2000 grams of 24 carat purity and with a market value of Rs. 59,20,000/-. The impugned gold bars were seized under a mahazar dated 18.09.2013. Sirajudeen in his statement, inter alia, accepted the seizure of goods as per the mahazar and that he was only a carrier of the said seized goods and as per

the instruction he received, the gold bars were to be handed over to the Applicant in Kerala. Based on the statement of Sirajudeen, the Applicant was summoned on 19.09.2013 and his statement was recorded. The Applicant had stated inter-alia that he knew Sirajudeen and admitted that the statement given by Sirajudeen was correct; that he had received the photograph of Sirajudeen in his mobile phone and this was meant to identify Sirajudeen upon his arrival with the gold from Dubai. The appellant had admitted that Sirajudeen had acted as carrier on seven earlier occasions and smuggled gold for them. He also added that one Neelu Khader of Dubai had informed him of the gold being sent through Sirajudeen and that smuggling was done by them as they got high profit.

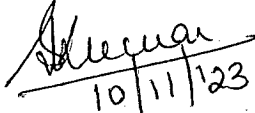
4. The revision application has been filed, mainly, on the grounds that the adjudicating as well as the appellate authority have failed to consider the contentions raised by the applicant and have misapplied the law; the appreciation of material has been erroneous and against the settled position of the Customs Act; the procedure adopted in this case is neither free nor fair; procedure adopted is prejudicial to the applicant and therefore imposition of penalty under Section 112(a) of the Customs Act is against the principles of fair procedure.

5. Personal hearings in the matter were fixed on 23.08.2023, 20.09.2023 and 11.10.2023 respectively. No one appeared from the Applicant's side. Ms. R. Latha, Assistant Commissioner appeared on 23.08.2023 and 20.09.2023 from the respondent department side. Sh. R. Anil, Advocate for the applicant's side his letter dated 18.09.2023 intimated his inability to appear for personal hearing, reiterated the grounds of appeal and requested to take into consideration the argument note dated 24.08.2023 which has elaborated upon the grounds raised in the revision petition. Therefore, the matter is taken up for decision based on the aforesaid submissions.

6. The Government has carefully examined the matter. As per sub-section (3) of Section 129DD, *ibid*, a revision application shall be accompanied by a fee of Rs.

1,000/- when the amount of duty and interest demanded, fine or penalty levied by an officer of customs, in the case to which the application relates, is more than one lakh rupees. The use of word 'shall' in the said sub-section (3) makes it apparent that the requirement of fee is mandatory. It is observed that the Applicant has not paid the mandatory RA fee of Rs. 1,000/- even though penalty involved in the subject case is in excess of Rs. 1,00,000/-. Court fee stamps are also not affixed. These issues have been communicated to the Applicant for rectification vide email/letters dated 31.07.2023, 31.08.2023, 19.09.2023 and 21.09.2023 respectively. However, the Applicant has failed to comply. Therefore, the subject revision application is not maintainable as it does not meet the requirements Section 129DD of the Customs Act, 1962.

7. The revision application is, accordingly, rejected as non-maintainable, without traversing the merits of the case.

  
10/11/23  
(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Abdul Khader,  
S/o Mammu 'Zion',  
Kuthirapambath, P.O. Peringathur,  
Thalassery, Kannur District -670675

Order No. 267/23-Cus dated 10-11-2023

Copy to:

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2. The Commissioner of Customs (Preventive), 5<sup>th</sup> Floor, Catholic Centre, Broadway, Cochin -882031
3. Shri R. Anil Advocate, M/s B. Raman Pillai & Associates, 41/3611, Old Railway Station Road, Kochi-682018
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED

  
10/11/2023  
सरपजीत सिंह / SARABJEET SINGH  
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