

**SPEED POST**



F. No. 373/228/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. 20/02/24

Order No. 54/24-Cus dated 20-02-2024 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 Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. TVM-EXCUS-000-APP-214-2019 dated 29.03.2019 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Cochin.

Applicant : Sh. V.K Abdul Rafeeqe, Kozhikode

Respondent : The Commissioner of Customs, Thiruvananthapuram

**ORDER**

Revision Application No. 373/228/B/2019-RA dated 08.07.2019, has been filed by Sh. V.K Abdul Rafeeqe, Kozhikode (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TVM-EXCUS-000-APP-214-2019 dated 29.03.2019, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Cochin. The Commissioner (Appeals) has upheld the Order-in-Original, passed by the Joint Commissioner of Customs, Airport, Thiruvananthapuram, bearing no. 01/2017-18 CUS (JC) dated 28.04.2017 except to the extent of setting aside the penalty of Rs. 15,00,000/- imposed upon the Applicant herein under Section 114AA of the Customs Act, 1962. Vide the aforesaid Order-in-Original, four gold bars of 24 carat purity, totally weighing 2233.28 grams and collectively valued at Rs. 59,62,857/-, recovered from the Applicant were confiscated absolutely under Section 111(d), (e), (l) and (m) of the Act *ibid*. Besides, penalties of Rs. 15,00,000/- each were also imposed on the Applicant under Section 112(a) & (b) and 114AA, respectively, of the Act *ibid*.

2. Brief facts of the case are that acting on a tipoff, Directorate of Revenue Intelligence, Thiruvananthapuram (hereinafter referred to as 'DRI') proceeded to check the passports of passengers who had arrived from Dubai on 27.01.2016 alighting at Thiruvananthapuram at the airway bridge and identified the Applicant from his passport. Thereafter a watch was kept over him while he was completing the immigration formalities and baggage clearance at the Customs Baggage Hall. On collection of his checked-in baggage, the Applicant opted for Green Channel Clearance and while he was passing through the exit gate, he was intercepted by DRI officers. Verification of his Customs Declaration Form revealed that he had not declared gold or any other dutiable item. The Applicant denied possession of gold either on his person or in his baggage even after repeated enquiries. He further informed that he had nothing to declare other than what he had already declared in the Customs Declaration Slip. On rummaging of the aircraft, two heavy yellow metallic bars and two yellow metallic biscuit shaped pieces wrapped with white cellophane tapes were found under the seat occupied by the Applicant. Upon enquiry the Applicant admitted that those heavy yellow metallic pieces are of gold and

were carried by him in his voyage with an intention to smuggle the same in to India and as planned earlier, he placed the said metallic objects beneath his seat to be taken out by some staff. Further, nothing incriminating was found upon the search of his person and his baggage. The approved assayer examined the aforesaid yellow metal bars and certified them to be of 24 carat gold, totally weighing 2233.28 grams and collectively valued at Rs. 59,62,857/-.

In his statement dated 27.01.2016, tendered under Section 108 of Customs Act, 1962, the Applicant inter-alia stated that he had been working in Dubai as a driver and returned in 2015; that due to his financial problems, he went back to Dubai in November 2015 to work as a travel guide; that there he made friendship with one Sh. Riyas who said to be hailing from Kozhikode suggested that smuggling of gold in to India is profitable and he can make money; that even though he was aware that smuggling is an offence, due to his financial hardships, he agreed for the same; that on 23.01.2016, Sh. Riyas met him and informed that arrangements are made to smuggle gold through Thiruvananthapuram International Airport and he has to travel from Dubai to Thiruvananthapuram on 26.01.2016; that he had to place the gold beneath his seat and the same would be taken out by some other person on arrival at Thiruvananthapuram; that as planned, he reached Dubai airport on 26.01.2016 at around 06:00 p.m. along with Sh. Riyas; that Sh. Riyas had paid for his ticket from Dubai to Thiruvananthapuram and details were messaged from his phone; that Sh. Riyas handed over the packet that he had to place beneath his seat on arrival at Thiruvananthapuram and confirmed that it contained two gold bars and two gold biscuits; that on reaching Thiruvananthapuram he placed the packet containing gold beneath his seat and he did not know how and who will take out the gold from the flight; and that Sh. Riyas offered him money and informed that it would be paid at his home as he reaches there. The matter was decided vide aforesaid Order-in-Original dated 28.04.2017. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been modified as above.

3. The Applicant has filed revision application mainly on the grounds that no gold was seized from the Applicant; that Applicant has been made a scapegoat on assumption and presumption; that statement of the Applicant was recorded under coercion and the

statement has not been corroborated by any other evidence; that penalty should not have been imposed under both clauses of Section 112; that penalty ought to have been reduced considerably and it is prayed that penalty be set aside or modified as it is exorbitant.

4. Personal hearing was held on 29.11.2023. Sh. Mitra Prasad, Advocate appeared on behalf of the Applicant and reiterated the written submissions sent via email on 27.11.2023 and submitted that the Applicant works as a driver and is not in a position to pay the heavy penalty imposed on him. Maximum penalty should have been around 10% of the duty sought to be evaded. He prayed for a lenient view.

5. The Government has carefully examined the matter. It is observed that the Applicant was intercepted after being identified and followed by DRI officers at the exit gate of the Customs Arrival Hall. 04 gold bars were recovered beneath the seat occupied by the Applicant. The sequence of events has been recorded in the Mahazar dated 27.01.2016 in the presence of two independent witnesses. Further, the Applicant himself has admitted his role in the smuggling activity due to the lure of money vide his statement recorded under section 108 of the Customs Act, 1962. Hence, the contention of the Applicant that he has been made a scapegoat on assumption and presumption is not tenable.

6. The Applicant has contended that his statement was recorded under threat/coercion. However, the Government finds that the entire proceedings were covered under a Mahazar dated 27.01.2016, in the presence of two independent witnesses, which corroborates the sequence of events. No evidence has been brought forth regarding coercion. His statement has not been retracted. Moreover, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for

conviction. In the present case, the Applicant has admitted his involvement in the case of smuggling. Therefore, the contention that the statement was tendered under coercion is not borne out by facts. As such, the claims that the statement of Applicant was taken under duress or coercion is not sustainable.

7. In terms of Section 123 of the Act, *ibid*, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person from whom goods are recovered. In the present case, the Applicant has admitted to the *modus operandi* of hiding the gold beneath the aircraft seat which was intended to be removed later by an airport staff. He has ingeniously concealed the gold so that he did not have to declare the gold to the Customs authorities under Section 77 of the Customs Act, 1962 which seems to have been a pre-meditated planning. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. As such the intention to smuggle on the part of Applicant is clearly established.

8. SECTION 112 of the Customs Act, 1962 reads as under:-

Penalty for improper importation of goods, etc.-

*Any person, -*

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

As far as the contention of the Applicant that Sections 112 (a) and (b) both are not simultaneously applicable is concerned, it is seen that nowhere it is mentioned that both clauses cannot be applicable simultaneously. Moreover, the contravention of the Applicant of not declaring the goods when repeatedly asked orally and hiding the impugned goods

so that someone else smuggle them out falls under both the clauses. Hence, this contention also does not merit consideration.

9. In the facts and circumstances of the case, the Government finds no infirmity in the order passed by the Commissioner (Appeals).

10. In view of the above, the revision application is rejected.

*Shubhagata Kumar*  
20/2/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

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Order No. 54 /24-Cus dated 20-02-2024

Copy to:

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2. The Commissioner of Customs, P.B No. 13, I.C.E Bhavan, Press Club Road, Thiruvananthapuram-695001.
3. Sh. C. Mithra Prasad, Consultant, H. No. 5/469-B, Sasthrinagar, Eranhipalam, Calicut-673006.
4. PPS to AS(RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED

*Sarabjeet Singh*  
20/2/24

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