

SPEED POST



F. No. 380/61/B/SZ/2019-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...14/03/24

Order No. 65/24-Cus dated 14-03-2024 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. 62/2019 dated 15.04.2019, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : The Commissioner of Customs, Mangaluru

Respondent : 1. Sh. Ateequrrehman, Bhatkal
2. Sh. Basit Abdul Kader, Bhatkal
3. Sh. Liyakataali Akbari, Bhatkal
4. Sh. Hajeeb Abdul Wahid Mohammed Jafer, Bardez Goa

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ORDER

A Revision Application, bearing No. 380/61/B/SZ/2019-RA dated 09.08.2019, has been filed by the Commissioner of Customs, Mangaluru (hereinafter referred to as the Applicant department), against the Order-in-Appeal No. 62/2019 dated 15.04.2019, passed by the Commissioner of Customs (Appeals), Bengaluru. The matter was initially adjudicated vide Order-in-Original No. 41/2018 ADC dated 17.12.2018 passed by the Additional Commissioner of Customs, Mangaluru International Airport, Mangaluru. Vide the aforementioned Order-in-Original the following was recovered from Sh. Ateequrrehman, Sh. Basit Abdul Kader, Sh. Liyakataali Akbari & Sh. Hajeab Abdul Wahid Mohammed Jafer (hereinafter referred to as Respondent-1, Respondent-2, Respondent-3 & Respondent-4, respectively):-

S.No.	Name of passengers/Respondents (Sh.)	No. of gold bars/pieces	Total weight of gold (in grams)	Market Value (in Rs.)	Penalty under Section 112(a) (in Rs.)	Penalty under Section 114AA (in Rs.)
1.	Ateequrrehman	04 tola bars	466.000	13,84,020/-	4,00,000/-	2,00,000/-
2.	Basit Abdul Kader	04 tola bars	466.000	13,84,020/-	4,00,000/-	2,00,000/-
3.	Liyakat Ali Akbari	04 tola bars + 03 gold cut pieces	538.080	15,98,097/-	4,75,000/-	2,40,000/-
4.	Hajeab Abdul Wahid Mohammed Jafer	04 tola bars	466.000	13,84,020/-	4,00,000/-	2,00,000/-
	Total	16 tola bars + 03 cut pieces	1936.080	57,50,157/-		

The aforementioned gold items were absolutely confiscated under Section 111(d), 111(i) & 111(l) of the Customs Act, 1962 and penalties under Section 112 (a) & 114AA of the Act, ibid were imposed respectively as mentioned above. The Applicant department filed an appeal against this order seeking imposition of higher penalties under Section 112(a) and 114AA of the Customs Act, 1962. The Commissioner (Appeals) vide his order dated

15.04.2019 dismissed the appeal of the Applicant department as being devoid of merit. Aggrieved, the Applicant department has filed this revision application.

2. Brief facts of the case are that acting on an information the officers of DRI, Mangaluru conducted checks at the exit gate of the Green Channel of Mangaluru International Airport on the passengers who had arrived from Dubai to Mangaluru on 13.10.2017 and intercepted the Respondents herein. The Respondents were specifically and individually asked whether they had any dutiable/contraband goods either on their person or in their baggage to which all of them replied in the negative. Thereafter, upon the search of their person the aforementioned gold items were recovered which were secreted in small packets underneath the soles of their feet and socks were worn over them. Sh. B. Rathnakar of M/s. Rathan Jewellers, Mangaluru examined the said gold and certified that the said gold is of 24 carat purity having total weight 1936.080 grams and having market value of Rs. 57,50,157/-. All of the Respondents accepted their role in the smuggling activity in their statement dated 13.10.2017 recorded under Section 108 of the Customs Act, 1962.

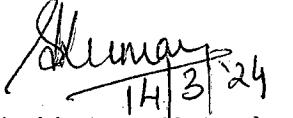
3. The revision application has been filed mainly on the grounds that penalties imposed under Section 112 (a) and 114AA of the Customs Act, 1962 are less and should be on higher side.

4. Personal hearing in the matter was fixed on 14.03.2023, 21.03.2023, 28.03.2023 & 13.03.2024. Sh. Vasudeva Naik, Assistant Commissioner appeared for the Applicant department on 14.03.2023 & 21.03.2023, however, no one appeared from the side of Respondents. In the hearing held on 13.03.2024, Sh. Krishna Kumar, Assistant Commissioner appeared for the Applicant department on 13.03.2023 and reiterated the grounds stated in the RA and sought higher penalties on the Respondents. No one appeared for the Respondents. As such, it is presumed that the Respondents have nothing to state in the matter. Hence the matter is being taken up for disposal based on available records.

5. The Government has carefully examined the matter. It is seen that the only point for which the revision application has been filed is for the increase in penalties imposed on the Respondents. Section 112 (i) prescribes "in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater." Here, the section clearly states that the quantum of penalty cannot exceed the value of the goods and it is the discretion of the adjudicating authority to impose penalty subject to the limitation as mentioned in the said Section. The Government observes that in the instant case, the penalties imposed upon the Respondents under Section 112(a) & 114AA of the Customs Act, 1962, work out to approximately 43% of the value of the

goods. The Government concurs with Commissioner Appeals' observation that the quantum of penalty is quite sufficient to act as a deterrent against the smuggling activity and does not find any merit in the prayer for increase in penalty.

6. In view of above, the Order-in-Appeal is upheld and the revision application is rejected.


14/3/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

The Commissioner of Customs,
New Customs House, Panambur
Mangaluru-575010

Order No. 65/24-Cus dated 14-03-2024

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. Sh. Ateequrrehman, S/o Sh. Abu Bakkar Shaik, Molana Alimiya Road, Gudihittal Shirali, Bhatkal, Uttar Kannada-581354
3. Sh. Basit Abdul Kader, House No. 1282A, Khasre Sijal, Madina Colony, Jali Bhatkal, Karnataka.
4. Sh. Liyakat Ali Akbari, S/o Sh. Shaja Mohiddin Akbari, House No. 118, Akbari House, Gulzar Street, Magdoom Colony, Bhatkal, Karwar, Uttar Kannada-581320.
5. Sh. Hajeer Abdul Wahid Mohammed Jafer, S/o Sh. Mohammed Jafer Hajeer, House No. 227, Ward No. 7, Angod, Mapusa, Bardez, Goa-403507.
6. PPS to AS(RA).
7. Guard file.
8. Spare Copy.
9. Notice Board.

ATTESTED