

**SPEED POST**



F. No. 373/419/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. 22/10/24

Order No. 88/24-Cus dated 22-03-2024 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. CAL-EXCUS-000-APP-346-2019 dated 08.07.2019 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi.

Applicant : Sh. Thazhe Kelam Parambath Faisal, Kozhikode

Respondent : The Commissioner of Customs, Calicut

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**ORDER**

Revision Application No. 373/419/B/2019-RA dated 14.10.2019, has been filed by Sh. Thazhe Kelam Parambath Faisal, Kozhikode (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CAL-EXCUS-000-APP-346-2019 dated 08.07.2019, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi. The Commissioner (Appeals) has upheld the Order-in-Original, passed by the Additional Commissioner of Customs, Airport, Calicut, bearing no. 01/2017-18 dated 01.06.2017 except to the extent of setting aside the penalty of Rs. 2,50,000/- imposed upon the Applicant under Section 114AA of the Customs Act, 1962. Vide the aforesaid Order-in-Original 8 pieces of gold having 24 carat purity, totally weighing 932 grams and valued at Rs. 22,76,410/- (Tariff value) & Rs. 25,63,000/- (Market value), recovered from the Applicant were confiscated absolutely under Section 111(d), (i), (j), (l), (m), (o) & (p) of the Act *ibid*. Besides, penalties of Rs. 2,50,000/- each were also imposed on the Applicant under Section 112(a) and 114AA, respectively, of the Act *ibid*. Further, penalty of Rs. 2,50,000/- was also imposed under Section 112(a) on one Sh. Ashraf Kunnoth.

2. Brief facts of the case are that the Customs officers intercepted the Applicant upon his arrival at Calicut International Airport from Sharjah on 25.04.2015 at the exit gate. He was asked whether he was in possession of any non-duty paid gold or any other valuables, he replied in the negative. The Customs Declaration Form signed by him showed value of dutiable goods to be Rs. 5000/-. Thereafter, upon the search of his person, 08 tola bars were recovered from the underwear pocket of the Applicant. Further, a purse containing 350 UAE Dirhams was recovered from his pants pocket and it was returned to him. The said 08 tola bars were subjected to purity check by Sh. N.V Unnikrishnan, Goldsmith and after verification he certified them to be 932 grams in weight and all of 24 carat purity.

In his statement after the seizure, tendered under Section 108 of Customs Act, 1962, the Applicant stated *inter-alia* that one Nissar, his friend and neighbour at Abu Dhabi introduced him to one Sh. Salim, a native of Kannur who had connections with smuggling of gold to India; that Salim offered him a remuneration of Rs. 20,000/- and a flight ticket to Kozhikode, if he could carry the gold biscuits to his native place and he

agreed; that Salim had handed over to him an air ticket for 24.04.2014 from Sharjah to Kozhikode by Air India Flight and had instructed him to reach Sharjah Airport for boarding the said flight; that Salim had further told him that one Sh. Ashraf who would be travelling in the same flight would hand over the gold to him in the flight; that accordingly he boarded the flight from Sharjah on 24.04.2015; that when the flight was about to land at Kozhikode, a person who was travelling at Seat No. 24C had approached him and handed over the said gold; that he was further directed to keep the said gold over the Lift near Gate No. 1 of Kozhikode Airport after receiving the instructions over mobile phone on his landing at Calicut Airport; that he was also told that their people would approach him outside the Airport and would give him his remuneration of Rs. 20,000/-. However, he could not keep the gold over the Lift because of the presence of Customs officers near the Lift and he also did not get any instructions on mobile phone. Hence he concealed the gold inside his underwear pocket and came to the Customs Hall after immigration clearance; that he was not aware of the phone number or any other details of Nissar and Salim; that he had neither declared the gold at the Customs Counter nor shown it in the Customs Declaration as he intended to smuggle the gold without paying duty; that he had no foreign currency to pay the duty; that he had no investment in the above said gold; that he was aware that he did not have the eligibility to bring the said gold and he had not stayed abroad for 6 months; that he tried to smuggle the gold for financial benefit; and that he had indulged in such an offence due to his poor financial condition and that earlier he had not attempted to clear anything without payment of customs duty and this statement was given by him under freewill without any threat or coercion.

The matter was decided vide the aforesaid Order-in-Original dated 01.06.2017. 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 the relied upon documents contained a lot of fabrications; that the statement of the Applicant was obtained forcefully; that the Mahazar did not contain the pre-requisite that the searching officer had reason to believe that the goods seized were liable to confiscation under the Customs Act and that this fact was missed by the original authority; that the right of the

Applicant to be searched before a Magistrate or a Gazetted officer was flouted; and that the gold bars were properly declared and if the goods could not be cleared, the same should have been detained for re-export under Section 80 of the Customs Act, 1962. It is prayed that penalty be reduced.

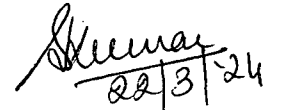
4. Personal hearing was fixed on 23.02.2024 which was attended by Ms. R. Latha, AC who appeared for the Respondent and submitted that while the Applicant has tried to make out a case that there are several issues with the OIO, he seems to have completely ignored the fact that the Applicant was not an eligible passenger and that the applicant did not declare the goods as required by the Customs Act; that the applicant was intercepted at the exit gate of the arrival hall with 932 grams of gold bars and would have left the airport undetected but for the interception and there was concealment meriting penalty under section 114AA of the Customs Act. No one appeared from the side of Applicant. In the hearing held on 11.03.2024, again M/s. R. Latha, AC appeared for the Respondent and reiterated her earlier submissions and stated that the matter is a clear case of violation of the Customs Act, meriting penalty as stated in the previous P.H. No one appeared for the Applicants.

5. The Government has carefully examined the case records and finds that the Applicant has submitted the copy of purchase invoice dated 24.04.2015 of the impugned gold which bears the Applicant's passport Number, as also a copy of currency exchange document dated 21.04.2015. Both dates are prior to the arrival of the Applicant. As per the OIO, these were not taken into consideration on the ground that these were not produced at the time of arrival but subsequently and that computerized bills can be fabricated and easily made on a back date. However it is observed that there is nothing on record to show that these bills were found to have been forged and are not genuine. The Applicant has quoted a case with similar facts and circumstances and of the same time period where invoices subsequently produced have been taken into consideration and the clearance of gold allowed upon payment of duty viz. OIO No. 37/2016-17 dated 23.02.2017. Another issue relates to the statement recorded under Section 108 of the Customs Act. In para 3 of the OIO it is mentioned that the statement was typed on the

request of the applicant, whereas in para 14 it is stated that the statement was recorded legibly in the language known to the applicant 'in his own hand'; which are contradictory.

6. In view of the aforesaid facts and circumstances of the case, it would be in the interest of justice that the matter is remanded to the original adjudicating authority for deciding the matter afresh after considering all the evidence and all aspects of the case, and after following the principles of natural justice.

7. The revision application is, accordingly, allowed by way of remand to the original adjudicating authority, with directions to consider the case afresh as per para 5 above and after giving the Applicant an opportunity to be heard and to pass a comprehensive, reasoned and speaking order within three months from the date of receipt of this order. So ordered.

  
22/3/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

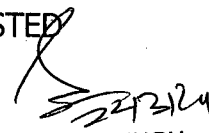
Sh. Thazhe Kalam Parambath Faisal  
S/o Moosakutty, Thazhe Kalam Parambath House  
Poovattuparamba P.O  
Kozhikode-673008.

Order No. 88 /24-Cus dated 22-03-2024

Copy to:

1. The Commissioner of Central Tax, Central Excise & Customs (Appeals), Central Revenue Building, I.S Press Road, Kochi-682018.
2. The Commissioner of Central Excise, Customs & Service Tax, C.R Building, Mananchira, Calicut-673001.
3. PPS to AS(RA).
4. Guard file.
5. Spare Copy.
6. Notice Board.

ATTESTED

  
सरबजीत सिंह / SARABJEET SINGH  
अधीक्षक / Superintendent (R.A. Unit)  
वित्त मंत्रालय / Ministry of Finance  
राजस्व विभाग / Department of Revenue  
Room No. 605, 6th Floor., B-Wing  
14, Hudco Vishala Building, Bhikaji Cama Place,  
New Delhi-110066