

SPEED POST



F. No. 373/192/B/2018-RA
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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... 18/4/23

Order No. 149-150/23-Cus dated 18-4-2023 of the Government of India passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under section 129DD of the Custom Act, 1962.

Subject : Revision Applications, filed under Section 129 DD of the Customs Act 1962 against the Orders-in-Appeal No. 104/2018 dated 05.03.2018 & No. 52/2018 dated 22.01.2018, both passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicants :1. Sh. J.P. Sreejith, Calicut
2. Sh. Nideesh Tharol, Calicut

Respondent : Pr. Commissioner of Customs, Airport & Air Cargo Complex, Bengaluru

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ORDER

Revision Applications, bearing Nos. 373/192/B/2018-RA & 373/193/B/2018-RA both dated 24.04.2018, have been filed by Sh. J.P. Sreejith, Calicut & Sh. Nideesh Tharol, Calicut (hereinafter referred to as the Applicant-1 & Applicant-2, respectively) against the Orders-in-Appeal No. 104/2018 dated 05.03.2018 & No. 52/2018 dated 22.01.2018, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals), in both the appeals, has upheld the Order-in-Original passed by the Additional Commissioner of Customs, Airport & Air Cargo Complex, Bengaluru, bearing no. 02/2017-18 (AP-ADM) dated 31.07.2017 read with the Corrigendum dated 14.11.2017, ordering absolute confiscation of 01 gold ring weighing 25.20 grams, 01 bangle of 58.29 grams, 01 chain of 116.67 grams and 01 chain of 58.26 grams, totally weighing 258.42 grams, collectively valued at Rs. 6,78,352/-, recovered from Applicant-2 along with assorted gold items/gem stones/other items recovered from other persons, under Sections 111(d), 111(l) and 111(m) of the Customs Act, 1962. Besides, penalties of Rs. 2,00,000/- & Rs. 1,50,000/- were imposed on Applicant-2 under Sections 112(a) & 114AA, respectively, of the Act, *ibid*. Further, penalty of Rs. 1,00,000/- was also imposed on Applicant-1 under Section 112 of the Act, *ibid*. Penalties were also imposed on other persons under Section 112 of the Act, *ibid*, who are not party to this case before the Government.

2. Brief facts of the case are that officers of the Directorate of Revenue Intelligence, Bengaluru, based on a specific information, intercepted Applicant-2 at the aerobridge of Kempegowda International Airport, on 02.10.2015, upon his arrival from Dubai. On verification of his Customs Declaration Form, it was noticed that he had declared 'NIL' value of dutiable goods being imported by him. His hand bag and check-in bag were scanned at the Customs Arrival Hall which were found to contain some clothing and personal effects and nothing incriminating was found. On repeated enquiry, he admitted that he was carrying crude gold jewellery of 24 carat viz. 02 gold chains, 01 gold ring and 01 bangle. He further informed that he had worn the said gold jewellery except for 01 chain which was concealed in his pant pocket. He further informed that he was knowing that he was not a bonafide passenger to carry gold in such quantity and hence he deliberately did not want to declare the same in the Customs Declaration Slip and was supposed to hand over the said crude gold jewellery to either Sh. Mivin or Sh. Mufid Majeed, who would approach him at the aerobridge area, for further clearance. Thereafter, the DRI officers intercepted Sh. Mivin and Sh. Mufid Majeed, the ground handling staff of Air India SATS, who were found near the aerobridge area and enquired about Applicant-2. Initially Sh. Mivin and Sh. Mufid Majeed denied, but on repeated enquiries they revealed that they were supposed to take delivery of the above said crude gold jewellery brought by Applicant-2 at the aerobridge area. The approved gold appraiser/Valuer examined and certified the said gold items to be of 24 carat purity, totally weighing 258.42 grams, collectively valued at Rs. 6,78,352/-. Applicant-2, in his statement

dated 02.10.2015, recorded under Section 108 of the Customs Act, 1962, inter-alia, stated that he was in the business of readymade garments at Kozhikode; that as he was in need of quick money he was offered a good opportunity by his childhood friend Sh. Mujeeb alias Raja alias King; that the work was to carry gold from Dubai to India for which entire travel and stay for the said purpose would be borne by his friend; that Sh. Mujeeb further informed him to hand over the gold at the aerobridge to some airport staff at Bengaluru airport who would in turn smuggle it out without the knowledge of the Customs authorities; that in the evening of 01.10.2015, he was informed of the names of two Air India SATS ground handling staff personnel, namely, Sh. Mivin and Sh. Mufid Muzeed who would be on duty for the night shift and that he would have to hand over the gold to either of them at the aerobridge after disembarking from the aircraft. Further, Sh. Mivin, in his statement dated 02.10.2015, recorded under Section 108 of the Customs Act, 1962, inter alia, stated that in the evening of 01.10.2015, he received a call from one Sh. Mohammed Shuab of Bengaluru that one passenger by name of Sh. Nidheesh Tharol (Applicant-2) would be coming from Dubai to Bengaluru by Air India Flight AI 994 and that he would be carrying gold jewellery in person; that he would hand over the said gold jewellery at the aerobridge, which would then have to be handed over to some person who would call from airport later; that he was instructed by Sh. Mohammed Shuab to coordinate with Sh. Mufid who also works with him in his shift and arrange for collecting the gold from Applicant-2; that he was introduced to Sh. Mohammed Shuab by Sh. Arun Verma who was earlier working for Thai Airways and who is now working in Dubai; that he knew Sh. Mohammed Shuab for the last one year and that Sh. Mohammed Shuab offered him an amount of Rs. 40,000/- for helping in smuggling for 01 Kg gold bars which he agreed; that they discussed and devised the modus operandi as per which, a passenger who would travel from Dubai in any pre-fixed flight, after landing at Bengaluru, the passenger would place the gold bars into the dustbin inside the aerobridge and the international passenger would get cleared in the customs and exit the airport; that after his arrival duty, he would go back to the aerobridge, pick up the gold from the dustbin and go out from the ramp side, getting down from the aerobridge stairs and enter the airport building through Gate 7B, where there are no checks by CISF; that the allocation of work is done by on Sh. Shiril, who is the Supervisor; that they individually pay an amount of Rs. 5,000/- to Shiril for each duty allocation; that everytime, Sh. Mohammed Shuab would either message through Whatsapp or call him in advance about the arrival of passenger; that frequently Sh. Sreejith (Applicant-1), Sh. Janish and Sh. Binil would arrive in addition to other passengers; and that during discussions with Sh. Mohammed Shuab, he came to know that Sh. Sreejith is also a partner and that he would arrange for passengers from Dubai. The statement of Applicant-1 was recorded on 02.02.2016, under Section 108 of the Customs Act, 1962, before the DRI officers, wherein he, inter alia, stated that he was in garments business; that he travels to Bangkok and Dubai for purchases; that he had gone through the statement of Sh. Mivin dated 02.10.2015 and he

knows him and Sh. Mohammed Shuab; that he had gone through the statement dated 03.12.2015 of Sh. Mohammed Shuab and agreed with the contents of the same; that he and Sh. Mohammed Shuab both work together for garments business and used to share profit and get commission; that he went through the contents of both the statements dated 08.10.2015 and 09.10.2015 of Sh. Mivin and agreed for his role of helping Sh. Mohammed Shuab in the smuggling of gold for him on five occasions as a carrier; that he brought minimum 01 Kg gold bars wrapped with black cello tape from the place of Dubai itself for Sh. Mohammed Shuab, and dropped the same in the first dustbin available before the immigration area at Kempegowda International Airport, Bengaluru as per the instructions of Sh. Mohammed Shuab; that he was offered Rs. 10,000/- per trip as commission along with free Air tickets for to and fro travels from Sh. Mohammed Shuab. As part of follow up action, the officers of DRI conducted searches at the residential premises of other persons where the recovered aforementioned items. The case was adjudicated by original authority who ordered for absolute confiscation of gold and imposed penalty on the Applicants and other persons as mentioned above. Aggrieved, the Applicants filed appeals before the Commissioner (Appeals), which were rejected as mentioned above.

3. The revision application has been filed by Applicant-1, mainly, on the grounds that the entire case is built up on the seizure of gold from Applicant-2 and there is no nexus between Applicant-1 and the seizure of gold from Applicant-2; that Applicant-1 ought not to have been found guilty on the basis of statements which were not voluntary; and that penalty ought not to have been imposed which is highly excessive.

4. The revision application has been filed by Applicant-2, mainly, on the grounds that he brought the gold on his own and the statement was not voluntary; that gold under seizure, being ornaments, ought to have been released to him on imposition of redemption fine and duty; and that penalty imposed is highly excessive.

5. Personal hearing was fixed for both the matters on 03.04.2023. In the hearing held, in virtual mode, Sh. K.M. Suresh Chandran, Advocate appeared for the Applicants in these connected matters and reiterated the contents of the respective RAs. He submitted that:

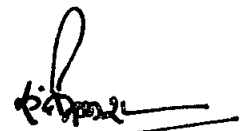
- i) It is admitted that undeclared gold was found on Sh. Nidheesh Tharol. However, it is a solitary instance. Hence, penalty imposed may be reduced.
- ii) Sh. J.P. Sreejith has no connection with the smuggled gold and has been dragged into the matter based only on the statements, which were obtained forcibly. Hence, he is not liable for penal action.

No one appeared for the department nor any request for adjournment has been received. Hence, it is presumed that department has nothing to add in the matter. As such, the matter is taken up for disposal.

6. The Government has carefully examined the matter. It is an admitted fact that the gold items were recovered from the Applicant-2. His only contention, at this stage, is that the penalty imposed may be reduced. Applicant-1 has, however, completely denied his culpability in the matter. It is claimed that he has been dragged into the matter based only on statements, which were obtained forcibly. At the outset, it is observed that no retraction has been placed on record. Retractions, if any, as part of reply to show cause notice, was filed more than six months after the statements were originally recorded and, thus, these appear to be in the nature of afterthought rather than any genuine effort to set the record straight. Further, several other persons involved in the matter have also specifically revealed the role played by the Applicant-1. Therefore, the Government finds that the statements made were voluntary. 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. Further, 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. Hence, the subject contention can not be accepted.

7. Only question that, therefore, remains for consideration is whether the penalties imposed on the Applicants herein are commensurate with the gravity of the offence. The Government observes that in this case smuggling was being carried out in a well organized and premeditated manner, by compromising the staff of a ground handling agency operating at the airport. Therefore, in the facts and circumstances of this case, strict action is warranted. In this light, the Government finds that the penalties imposed on the Applicants herein are neither harsh nor excessive.

8. In view of the above, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. Sh. J.P. Sreejith
S/o Sh. Jayanandan,
'Karthika', East Hill Road,
P.O. West Hill, Calicut-673005
2. Sh. Nidheesh Tharol
S/o Sh. Raghunathan Tharol,
Tharol House, Kuttiyilthazham,

P.O. Guruvayurappan College,
Kozhikode-673014, Kerala

Order No. 149-150/23-Cus dated 18-4-2023
Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. The Pr. Commissioner of Customs, Airport & Air Cargo Complex, Air India SATS, Air Freight Terminal, Kempegowda, Bengaluru-560300.
3. Sh. K.M. Suresh Chandran, Advocate, 9/426, Court Road, Kozhikode, Kerala-673001.
4. PPS to AS(RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

ATTESTED

2022/04/01
अश्वनी कुमार लो / Ashwani Kumar Lau
अधीक्षक / Superintendent (R.A. Unit)
राजस्व विभाग / Department of Revenue
वित्त मंत्रालय / Ministry of Finance
Room No. 606, 6th Floor, B-Wing
14, Hudco Vishala Building, New Delhi-110066