

REGISTERED
SPEED POST



F.No. 372/28/B/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. 22/9/21

Order No. /86 /21-Cus dated 22 - 9 - 2021 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 Application filed, under section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. Kol/Cus(Airport)/AA/350/2019 dated 09.05.2019, passed by the Commissioner of Customs (Appeals), Custom House, Kolkata.

Applicant: Sh. Awadesh, Gorakhpur.

Respondent: The Commissioner of Customs (Airport & Admin), Kolkata.

ORDER

A Revision Application No.375/28/B/2019-RA dated 17.07.2019 has been filed by Sh. Awadhesh, Gorakhpur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. Kol/Cus(Airport)/AA/350/2019 dated 09.05.2019, passed by the Commissioner of Customs (Appeals), Kolkata whereby Commissioner (Appeals) has upheld the Order-in-Original No. 193/2018 ADC dated 26.12.2018 passed by the Additional Commissioner of Customs, Air Intelligence Unit, NSCBI Airport, Kolkata vide which 04 pieces of gold bars, collectively weighing 501.100 gms and valued at Rs. 15,08,311/-, have been confiscated absolutely by the original authority. A penalty of Rs. 5 lakhs was also imposed, which has been upheld in appeal.

2. The brief facts of the case are that the Applicant, Sh. Awadhesh, arrived on 23.09.2017, at the NSCBI Airport, Kolkata, from Bangkok and was intercepted while passing through the green channel towards the exit gate of the arrival hall with his hand baggage. On examination of his hand baggage, 04 pieces of 24 Karat Gold bars were recovered, collectively weighing 501.100 grams and valued at Rs. 15,08,311/-. He could not provide any document evidencing the licit possession/import of the recovered items. The Applicant, in his statement dated 23.09.2017, recorded under Section 108 of the Customs Act, 1962, admitted the concealment and recovery of the confiscated items. He also admitted that the recovered gold was given to him by one Ramcharan who promised to contact him on his arrival at

Kolkata but did not do so. He was offered Rs. 5,000/- for carrying the gold. He admitted his mistake and pleaded for leniency. The Additional Commissioner of Customs, vide Order-in-original No.193/2018 ADC dated 26.12.2018, ordered absolute confiscation of gold items weighing 501.100 gms under Section 111(d), 111(i) and 111(l) of the Customs Act, 1962. Being aggrieved, the Respondent filed an appeal before the Commissioner of Customs (Appeals), who, vide the impugned Order-in-Appeal, upheld the Order-in-Original.

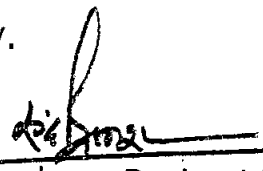
3. The revision application has been filed, mainly, on the grounds that as the person named Ramcharan was not made a party to the Show cause Notice; that his statement under Section 108 remains uncorroborated and hence reliance on it is bad in law.; that he was intercepted at the conveyor belt and that this was not a case of green channel violation as alleged; that the penalty was imposed by the lower authorities in a routine manner, without assigning specific quantum under Section 112 (a) and 112(b); that this being the first ever case of the Applicant, penalty may be reduced to bare minimum, if not waived. Accordingly, it has been prayed that the orders below may be modified only with respect to reduction of penalty imposed.

4. Personal hearing, in virtual mode, was held on 16.09.2021. Sh. Awadhesh Kumar, Applicant, appeared and reiterated the contents of revision application. He requested for leniency due to his poor economic condition. Sh. Saurabh Das, Superintendent, appeared for the Respondent department and supported the orders of the lower authorities.

5. The Government has carefully examined the case. Gold bars wrapped in black paper were recovered from the Applicant, which were not declared by him under Section 77 of the Customs Act, 1962, to the custom officer. Further, the Applicant had admitted the recovery of the seized items and the fact of non-declaration in his statement tendered under Section 108 of Customs Act, 1962. This statement has admittedly not been retracted. Hence, his contention that his statement was recorded under duress is not acceptable.

6. The Applicant has not challenged the absolute confiscation of the gold but has canvassed that the penalty imposed on him is excessive. In the facts and circumstances of the case, the Government reduces the penalty to Rs. 2.5 lakhs.

7. Revision application is disposed of, accordingly.


(Sandeep Prakash)

Additional Secretary to the Government of India


Mr. Awadhesh, S/o Sh. Ghisiyanwan Prasad,
Poli Bansgaon, Gorakhpur-273 403.

Order No. _ 186 _/21-Cus dated 22-9-2021

Copy to:

1. The Commissioner of Customs (Airport & Admin.), NSCBI
Airport, Kolkata – 700052.
2. The Commissioner of Customs (Appeals), 3rd Floor, Custom
House, 15/1, Strand Road, Kolkata – 700001.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.

ATTESTED


(LAKSHMI RAGHAVAN)
क्षेत्रीय अधिकारी / Section Officer
वित्त विभाग (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi