

SPEED POST



F. No. 373/301/B/SZ/2018-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...19/5/23

Order No. 197/23-Cus dated 19-05-2023 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 Application, filed under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. C.Cus.I No. 100/2018 dated 31.10.2018, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicants : Sh. Khader Khan, Kadapa

Respondent : Pr. Commissioner of Customs, Chennai-I

ORDER

Revision Application, bearing No. 373/301/B/SZ/2018-RA dated 12.11.2018, has been filed by Sh. Khader Khan, Kadapa (hereinafter referred to as the Applicant), against the Order-in-Appeal No. C.Cus.I No. 100/2017 dated 31.10.2018, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original passed by the Joint Commissioner of Customs (Adjn-Air), Chennai, bearing no. 259/2017-18-Airport dated 24.03.2018, except to the extent of dropping the penalty imposed under Section 114AA. Vide the aforesaid Order-in-Original, 11 nos. of gold cut bits and 01 no. of gold bar of 24 carat purity, totally weighing 893 grams and collectively valued at Rs. 26,14,704/-, recovered from the Applicant, were absolutely confiscated under Section 111(d) & (l) of the Customs Act, 1962. Besides, penalties of Rs. 2,60,000/- & Rs. 25,000/- were imposed on the Applicant, under Section 112 & 114AA, respectively, of the Act *ibid*.

2. Brief facts of the case are that the Customs officers intercepted the Applicant at the exit point of the arrival hall of Anna International Airport, Chennai, upon his arrival from Kuwait, via Doha, on 13.06.2017. Upon being questioned as to whether he was carrying any gold/gold ornaments, any dutiable items or any contraband, he replied in negative. However, upon search of his checked-in baggage, 02 nos of date packets were found with 5 nos. of black colour pieces of irregular shape in each packet, totalling 10 nos of black colour pieces, concealed therein. Upon removal of black colour coating from the recovered 10 nos of black colour pieces, 11 nos of yellow colour metal cut bits and 01 no. of yellow colour metal bar were recovered. The Gold Appraiser examined the aforementioned items and certified them to be 11 nos of gold cut bits and 01 gold bar, all of 24 carat purity, totally weighing 893 grams and collectively valued at Rs. 26,14,704/-. Upon being questioned as to whether the Applicant had any valid permit/licence/documents for the legal import of the said gold recovered from his baggage, he replied in negative and stated that the gold did not belong to him and it was given to him by his friend, namely, Sh. Syed at Kuwait airport with request to carry the same and hand it over to Sh. Irshad who would collect gold from him outside Chennai Airport; that Sh. Irshad would identify him by a photo sent by Sh. Syed through whatsapp; that he was offered free travel ticket from Kuwait to Chennai for carrying the above said two date packets with concealed gold;

that he was well aware that smuggling the gold into India by way of concealment and without declaration to Customs is an offence. In his statement, recorded under Section 108 of the Customs Act, 1962, immediately after seizure, the Applicant, inter-alia, stated that he was working as a driver in Kuwait and earned around 150 Kuwait Dinars per month; and that he committed this offence out of greed for monetary benefit and requested to be pardoned. The case was adjudicated by the original authority, vide aforementioned Order-in-Original dated 24.03.2018. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), which was decided as mentioned above.

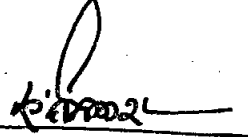
3. The revision application has been filed by the Applicant, mainly, on the grounds that the seized gold was purchased by him out of his earnings; that he is an eligible passenger to avail concessional rate of duty to clear the gold; that there is no need of imposing penalty under Section 114AA when penalty under Section 112(a) has already been imposed; that import of gold is not prohibited; and that the impugned order be set aside, re-export of the seized gold be allowed with less redemption fine or release of the same on concessional rate of duty and penalty be reduced or set aside.

4. Personal hearings in the matter were fixed on 08.05.2023 & 17.05.2023, in virtual mode. No one appeared for either side on any of the dates fixed for hearing. However, subsequently, Smt. Kamalamalar Palanikumar, Advocate for the Applicant, vide email dated 19.05.2023, requested to pass an order with the available records as she could not join the hearing. Hence, the matter is taken up for disposal based on available records.

5. The Government has carefully examined the matter. As per sub-section (3) of Section 129DD, *ibid*, a revision application shall be accompanied by a fee of Rs. 1,000/- when the amount of duty and interest demanded, fine or penalty levied by an officer of customs, in the case to which the application relates, is more than one lakh rupees. The use of word 'shall' in the said sub-section (3) makes it apparent that the requirement of fee is mandatory. It is observed that the Applicant has paid a RA fee of only Rs. 200/- even though penalty involved, in the subject case, is in excess of Rs. 1,00,000/-. The Applicant has failed to pay the balance amount of Rs. 800/- despite being repeatedly advised, vide letters dated 02.05.2023 & 09.05.2023. The revision application was filed

about four and half years ago but the requisite fee has still not been paid, despite repeated advise. Therefore, the Government holds that the subject revision application is not maintainable as it is not accompanied by the requisite fee, as provided under Section 129DD (3).

6. The revision application is, accordingly, rejected as non-maintainable, without traversing the merits of the case.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Khader Khan
S/o Sh. Patan Modhinkhan
15/126, Kothapalli, Rayachoty,
Kadapa, A.P.

Order No. 167/23-Cus dated 19-05-2023

Copy to:

1. The Commissioner of Customs (Appeals-I), 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
2. The Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai-600027.
3. Smt. P. Kamalamalar, Advocate, No. 10, Sunkrama Street, 2nd Floor, Chennai-600001.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



अश्वनी कुमार लौ / 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-110068