SPEED POST



F. No. 372/10/B/2021-R.A. **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 24/3/22

97/22-Cus dated 23-3-2022 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT

Revision Application filed under Section 129DD of the Customs Act,

1962 against

the

Order-in-Appeal

No.

KOL/CUS(Airport)/AKR/107/2021 dated 29.01.2021, passed by the

Commissioner of Customs (Appeals), Kolkata.

APPLICANT:

Shri Vinod Kumar Pareek, Howrah.

RESPONDENT:

Commissioner of Customs (Airport & Admn.), Kolkata.

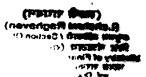
<u>ORDER</u>

A Revision Application No. 372/10/B/2020-R.A. dated 30.03.2021 has been filed by Shri Vinod Kumar Pareek, Howrah (hereinafter referred to as the Applicant) against Order-in-Appeal No. KOL/CUS (Airport)/AKR/107/2021 dated 29.01.2021, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 46/2019 JC dated 05.12.2019, passed by the Joint Commissioner of Customs, AIU, Kolkata.

2. Brief facts of the case are that the Applicant herein arrived at NSCBI Airport, Kolkata, from Bangkok, on 27.03.2018. While he was passing through Green Channel near the exit gate, he was asked by the Customs Officers whether he was carrying any dutiable items or gold items to which he replied in negative. Thereafter upon a search of his baggage and of his personal search, 4 pieces of gold of foreign origin wrapped with white coloured tissue paper and adhesive tapes, which were kept concealed in cigarette packs, were recovered. The gold bars, collectively weighing 1703 grams and valued at Rs. 51,60,090/-, were seized under Section 110 of the Customs Act, 1962. In his statement dated 27.03.2018, tendered under Section 108 of the Customs Act, 1962, the Applicant admitted that he had attempted to smuggle the seized gold bars of foreign origin which were concealed in the cigarette packs, for a monetary consideration of Rs. 10,000/-. The original authority, vide the Order-in-Original dated 05.12.2019, ordered for absolute confiscation of the seized gold bars under Sections 111(d), 111(i) and 111(l) of the Customs Act, 1962. A penalty of Rs. 13,00,000/- was also imposed on the Applicant herein

under Section 112. The appeal filed by the Applicant has been rejected by the Commissioner (Appeals).

- 3. The Revision Application has been filed, mainly, on the grounds that the statement dated 27.03.2018 was not voluntary; that upon being asked by the Customs Officers he had voluntarily handed over 2 cigarette packets which contained "solid moulds for auto parts", which were being carried on carrying charges of Rs. 5,000/-; that mensrea is not established and, hence, penalty is not leviable. Accordingly, it has been prayed that the penalty may be waived.
- 4. Personal hearings in the matter were fixed on 17.02.2022, 04.03.2022 and 23.03.2022. No one appeared for the Applicant. Shri D.K. Ramuka, Superintendent appeared for the respondent department, in the hearing held on 23.03.2022, in virtual mode. He reiterated the findings of the lower authorities. On 23.03.2022, after the hearing was complete, an email has been received from the Advocate for the Applicant expressing inability to attend the hearing and reiterating the content of the RA.
- 5. The Government has examined the matter carefully. The only submission of the Applicant, at this stage, is that the penalty may be waived as mens-rea has not been established. The Applicant has also contradicted the version rendered by him in his statement dated 27.03.2018 and has instead claimed that he had voluntarily disclosed to the Customs Officers that he was carrying "solid moulds for auto parts". However, this contention of the Applicant is not acceptable as 4 pieces of gold bars were recovered on his personal search and not "solid moulds for auto parts". Further, there is nothing on



record that the Applicant retracted from his statement dated 27.03.2018. In any case, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chabra vs. Union of India {1997(89)ELT 646(SC)}, held that a confession statement made before a Customs Officer, even though retracted, is an admission and is binding upon the person concerned. The contention that there is no mens-rea is also not borne out of records. The manner of concealment and the fact of non-declaration clearly establish that the Applicant had attempted to smuggle gold in a premeditated manner. As such, the Applicant is liable to penalty under Section 112 of the Customs Act, 1962. The quantum of penalty imposed is also just and fair in the facts and circumstances of the case.

5. In view of the above the Revision Application is rejected.

(Sandeep Prakash)

Additional Secretary to the Government of India

To, Sh. Vinod Kumar Pareek, S/o Sh. Onkarmal Pareek, 51/2/E, Rabindra Sarani, Liluah Howrah- 711204.

Order No. 97 /22-Cus dated 23-3-2022

Copy to:-

1. The Commissioner of Customs (Airport), NSCBI Airport, Kolkata-700052.

- 2. The Commissioner of Customs (Appeals), 15/1,3rd Floor, Strand Road, Customs House, Kolkata-700001.
- 3. P.S TO A.S (RA)
- 4. Guard File
- 5. Spare Copy

ATTESTED

(লানী ঘাঘ্যন)
(লানো Raghavan)
লানা টেনলা Raghavan)
লানা টেনলা / Section Officer
টিনা বিলালয় (ঘালাথ বিদান)
Mhictry of Finance (Deptt. of Rev.)
সাবে নকোন / Govt. of India
পারিলোঁ / New Delhi