

SPEED POST



F.No. 375/31/B/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 22/11/21

Order No. 11/21-Cus dated 21-01-2021 of the Government of India passed by Sh. 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.CC(A)Cus/D-I/Air/72/2018 dated 09.03.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Manmohan Singh

Respondent : Commissioner of Customs (Airport & General), New Delhi

ORDER

A Revision Application No. 375/31/B/2018-RA dated 06.04.2018 has been filed by Sh. Manmohan Singh, (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/72/2018 dated 09.03.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals) has upheld the order of the Joint Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. RLM/GENERAL/11/2016 dated 21.04.2016 wherein five pieces of rectangular yellow metal (made of gold), concealed in the cavity of trolley handle of the applicant, weighing 548.07 grams and valued at Rs. 13,38,900/-, have been absolutely confiscated and free allowance has been denied to the applicant. The adjudicating authority has imposed a penalty of Rs.1,30,000/- under Section 112 & 114AA of the Customs Act, 1962 on the applicant, which has been maintained in appeal.

2. The brief facts of the case are that the applicant arrived on 19.01.2014 at IGI Airport from Bangkok and was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person and of his baggage five pieces of rectangular yellow metal (made of gold), were recovered from his possession. The gold articles, weighing 548.07 grams, were appraised at Rs.13,38,900/- by the Jewellery Appraiser at IGI airport. The applicant in his statement, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of gold articles. He further stated that he had gone to Bangkok on 17.01.2014 and bought the gold for profit motive.

3. The revision application has been filed canvassing that the seized gold is not a prohibited item and hence may be released on payment of redemption fine and

appropriate duty. Gold article imported by the applicant is bonafide as the gold was bought by him. Imposition of Penalty under section 114 AA is not applicable as no incorrect declaration was made. Further, only a token penalty may be imposed under section 112(a).

4. Personal hearing was held on 20.01.2021. Sh. S.S. Arora, Advocate appeared on behalf of the applicant. He reiterated the grounds of revision already stated in the revision application. Sh. Arora stated that the case laws relied upon by the Commissioner (Appeals) are not applicable in their case as the applicant himself is the owner of the goods. Sh. R.P. Bairwah, Superintendent, appeared on behalf of the department. He reiterated the finding of the lower authorities and submitted that it is a case of outright smuggling by concealment in the baggage trolley handle. Accordingly, he requested that the impugned OIA be maintained.
5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision Application, the Government observes that the impugned gold item were cleverly concealed in the baggage trolley handle and the applicant did not declare the same under Section 77 of Customs Act, 1962 to the customs authorities at the airport. In the Customs Declaration slip, the applicant had not declared anything in Column 9 (Total value of dutiable goods imported). Further, the applicant has admitted the recovery of gold from him and the fact of non-declaration in his statement tendered under Section 108 of Customs Act, 1962.
6. The question of law raised by the applicant is that the import of gold is not 'prohibited'. The law on this issue is settled by the judgement of Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collection of Customs, Calcutta & Ors {1971 AIR 293}. Hon'ble Supreme Court held that for the purpose of Section 111(d)

of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words all types of prohibition. Restriction is one type of prohibition". The Additional Commissioner, in paras 14.2, 14.3, 14.4, 14.5& 14.6 of the O-I-O dated 21.04.2016, has brought out that the Gold is not allowed to be imported freely in baggage. It is permitted to be imported by a passenger subject to fulfillment of certain conditions. In the case of M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155)ELT423(SC)}, the Hon'ble Supreme Court has held that "if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods". The original authority has correctly brought out that in this case the conditions subject to which gold could have been legally imported have not been fulfilled. Thus, following the law laid down by the Apex Court, there is no doubt that the subject goods are 'prohibited goods'.

7. Hon'ble Madras High Court in the case of Commissioner of Customs (Air) Chennai-I vs. Samynathan Murugesan [2009 (247) E.L.T. 21 (Mad.)] relied on the definition of 'prohibited goods' given by the Apex Court in case of Omprakash Bhatia Vs. Commissioner of Customs, Delhi Supra [2003(155) ELT 423 (SC)] and has held as under:-

*"In view of meaning of the word "prohibition" as construed laid down by the Supreme Court in Om Prakash Bhatia case we have to hold that the imported gold was 'prohibited goods' since the respondent is **not an eligible passenger** who did not satisfy the conditions".*

The Apex Court has affirmed this order of Madras High Court {2010(254)ELT A 15 (Supreme Court)}. The ratio of aforesaid judgment is squarely applicable to the facts of the present case.

8. The original adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962, which has been assailed in the instant Revision Application. The Government observes that the option to release seized goods on redemption fine, in respect of "prohibited goods", is discretionary, as held by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. In the present case, the original authority has refused to grant redemption as the applicant attempted to smuggle the goods by concealment, for monetary gains, with intent to evade Customs Duty. In the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344)ELT1154 (Mad.)}, the Hon'ble Madras High Court, after extensive application of several judgments of the Apex Court, has held that "non-consideration or non-application of mind to the relevant factors, renders exercise of discretion manifestly erroneous and it causes for judicial interference." Further, "when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason"." It is observed that the original authority has in the instant case after appropriate consideration passed a reasoned order refusing to allow redemption in the background of attempted smuggling by concealment and for monetary gains. Thus, applying the ratio of P. Sinnasamy (Supra), the discretion exercised by the original authority does not merit interference.

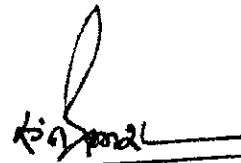
9. The original authority has imposed penalty under Section 112 & 114AA *ibid* which has been upheld in the impugned Order-in-Appeal. The imposition of penalty under Section 114AA has been assailed by the applicant. Section 114 AA reads as under:

'Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.'

The Government observes that the applicant has signed and made a false declaration on the Customs Declaration Slip. This declaration was required to be made under Section 77 *ibid*. Thus, the imposition of penalty under Section 114 AA is merited.

10. Applicant has also prayed for token penalty to be imposed under Section 112(a). The Government observes that, in the facts and circumstances of the case, the penalty of Rs. 1,30,000/- imposed under Section 112(a) and 114AA does not merit interference.

11. In view of the above, the Government upholds the orders of the lower authorities. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Mr. Manmohan Singh,
H. No. Q 21 A,
Jangpura Extension,
New Delhi 110014

Order No. 11 /21-Cus dated 21-01-2021

Copy to:

1. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037
2. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, Delhi-110037
4. Sh. S.S. Arora, Advocate, B-1/71, Safdrjung Enclave, New Delhi 110029
5. PA to AS(RA)
6. Guard File.

7. Spare copy.

ATTESTED

(Nirmala Devi)
Section Officer (Revision Application)