

SPEED POST



F.No. 375/16/B/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.. 28/09/21..

Order No. 194 /21-Cus dated 28-09- 2021 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 129 DD  
of the Customs Act 1962 against the Order-in-  
Appeal No. CC(A)Cus/D-1/Air/581/2018 dated  
07.12.2018 passed by the Commissioner of  
Customs (Appeals), New Delhi.

Applicant : Smt. Taranjit Kaur, Ludhiana.

Respondent : The Commissioner of Customs, IGI Airport,  
New Delhi.

**ORDER**

A Revision Application No. 375/16/B/2019-RA dated 11.03.2019 has been filed by Smt. Taranjit Kaur, Ludhiana (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-1/Air/581/2018 dated 07.12.2018 passed by the Commissioner of Customs (Appeals), New Delhi. Commissioner (Appeals) has upheld the Order-in-Original No. 223-Adj./2015 dated 15.02.2016, passed by the Additional Commissioner of Customs, IGI Airport, New Delhi, , wherein, 04 pieces of gold bangles and 01 piece of gold Chain, collectively weighing 520 gms and valued at Rs. 12,92,291/-, were confiscated absolutely under Section 111(d), 111(i), 111(j), 111(l), and 111(m) of the Customs Act, 1962. A penalty of Rs. 2.5 Lakhs was imposed on the Applicant under Section 112 and 114AA of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant arrived, on 27.06.2015, at IGI Airport, New Delhi, from Dubai. She was intercepted by the officers of Customs near the exit gate of arrival hall after she had crossed the green channel. On search of her person, 04 pieces of gold bangles and 01 piece of gold Chain, concealed on her waist, tied with black colour thread, collectively weighing 520 gms and valued at Rs. 12,92,291/-, were recovered. The same were confiscated absolutely by the original authority, vide the Order-in-Original dated 15.02.2016. Penalty of Rs. 2.5 Lakhs was also imposed on the Applicant. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who, vide the impugned Order-in-Appeal, rejected the appeal.

3. The instant revision application has been filed, mainly, on the grounds that the gold jewellery in question was her genuine possession, having been purchased with her own money; that the jewellery was secreted not to smuggle the same but for security reasons; that gold is not a prohibited item and should have been either released on payment of redemption fine or allowed to be re-exported; that the gold jewellery was duly purchased by her from Panache Jewels LLC, Dubai against cash payment; and that gold jewellery/ornaments are allowed to be imported in terms of Notification no. 12/2012-Cus dated 17.03.2012.

4. Personal hearing was held on 16.09.2021, in virtual mode. None appeared for the Applicant as well as the Respondent department. However, in reply to the personal hearing notice, an email dated 27.09.2021 has been received from Sh. R. S. Yadav, Advocate, requesting that the matter may be decided on the basis of grounds of appeal urged in the revision application. Since no request for adjournment has been received from the Respondent department, the matter is taken up for disposal on the basis of records available.

5. The Government has carefully examined the matter. It is observed that the Applicant has not produced any evidence to show that she had declared the subject gold items to the Customs on her arrival from Bangkok. To the contrary, the original authority has recorded that the Applicant had declared 'Nil' in the Col. 9 and 'No' in Col. 10(ii) and 10(iii) of the Customs Declaration Slip. Further, the Applicant had admitted,

in her statement dated 28.06.2015, tendered under Section 108 of Customs Act, 1962, the recovery of the gold items from her and the fact of intentional non-declaration. It was also stated that she was not in possession of any documentary evidence to show licit possession of the gold jewellery in question.

6. Section 123 of Customs Act 1962 reads as follows:

*"123. Burden of proof in certain cases.*

*(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—*

*(a) in a case where such seizure is made from the possession of any person,—*

*(i) on the person from whose possession the goods were seized; and*

*(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*

*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*

*(2) This section shall apply to gold and manufactures thereof watches, and any other class of goods which the Central Government may by notification in the Official Gazette, specify."*

Hence, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the

person, from whom goods are recovered. In the present case, the Applicant failed to produce any evidence that the gold jewellery recovered from her was not smuggled. The jewellery was not declared by her to the custom officers, as required under Section 77 of Customs Act, 1962. She admitted that she had intentionally not declared the gold items at the red channel to evade customs duty. The Applicant has, thus, failed to discharge the burden placed on her, in terms of Section 123, *ibid.*

7. It has been canvassed that the gold items were purchased by her husband in Dubai and a hand-made Cash Memo has also been produced to this effect. But this averment does not appear to have been made before any of the lower authorities. Further, in case the goods were licitly purchased, as claimed now, the aforesaid document would have been recovered from her at the time of her interception or it would have been produced during investigations. Thus, the present contention is nothing but an afterthought.

8.1 The Applicant has contended that the import of gold is not 'prohibited'. The Government observes that Hon'ble Supreme Court, in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors [1971 AIR 293], has 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*". Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfilment of certain conditions. In the case of M/s Om Prakash Bhatia Vs.

Commissioner of Customs, Delhi [2003(155) ELT423(SC)], the Apex 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"*. Further, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia (supra) to hold that *"any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."*

8.2 In the case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court has summarized the position on the issue, specifically in respect of gold, as under:

*"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962-----."*

8.3 The original authority has correctly brought out, in paras 3.3 to 3.5 of the Order-in-Original, that the gold jewellery is allowed to be imported subject to certain conditions and that, in this case, the conditions, subject to which gold could have been legally imported, have not been fulfilled. Thus, following the ratio of the aforesaid judgments, there is no doubt that the

subject goods are 'prohibited goods'. As such, the Order absolutely confiscating the seized gold is sustainable in law.

9. The original adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962. The Government observes that the option to release 'prohibited goods', on redemption fine, 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, with intent to evade Customs Duty and in the background of the Government's policy objectives. In the case of Raj Grow Impex (supra), the Hon'ble Supreme Court has held "*that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be according to the rules of reason and justice; has to be based on relevant considerations*". 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 in the context of Government's policy objectives in the matter. Thus, the discretion exercised by the original authority could not have been interfered with.

10. Section 80 of the Customs Act, 1962, reads as follows:

*"Temporary detention of baggage. - Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name"*

As the Applicant had not declared the gold at the time of her arrival, the request that the gold items may be allowed to be re-exported, cannot be acceded to, in the light of the provisions of Section 80 *ibid*.

11. In view of the above, the impugned Order of the Commissioner (Appeals) does not merit revision and the revision application is rejected.

  
(Sandeep Prakash)

Additional Secretary to the Government of India  
Smt. Taranjit Kaur, W/o Sh. Rajinder Singh Channa  
R/o B-33, plot No. 13-14, New Ashok Nagar,  
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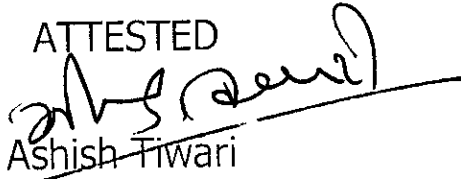
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Copy to:

1. The Commissioner of Customs, IGI Airport, New Delhi.
2. The Commissioner of Customs (Appeals), IGIA, New Delhi.
3. Sh. R. S. Yadav, Advocate, H. No. 36 P, Sector-40, Gurugram-122 003 (Haryana).
4. PA to AS(RA).
5. Guard File.
6.  Spare Copy.

ATTESTED



Ashish Tiwari

Assistant Commissioner (RA)