

SPEED POST



F. No. 372/48/B/2018-R.A.  
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. 1/2/21.....

ORDER NO. 26 /21-Cus dated 01-02-2021 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 129DD of the Customs Act, 1962 against the Order-in-Appeal No. KOL/CUS/(A/P)/AA/992/2018 dated 01.06.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : Mr. Sheikh Salim Ahmed.

RESPONDENT : Commissioner of Customs (Airport), Kolkata.

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**ORDER**

A Revision Application No. F. No. 372/48/B/2018-R.A. dated 11.07.2018 has been filed by Mr. Sheikh Salim Ahmed, (hereinafter referred to as the applicant) against Order-in-Appeal No. KOL/CUS/(A/P)/AA/992/2018 dated 01.06.2018, passed by the Commissioner of Customs (Appeals), Kolkata. The Order-in-Appeal has upheld the Joint Commissioner's Order-in-Original No. 50/2016 dated 27.02.2016 absolutely confiscating four hemispherical solids of gold weighing 320.6 grams valued at Rs. 9,10,504/- and 8000 sachets of RMD Guthka valued at Rs. 40,000/- under Sections 111(d), 111(i), 111(l) and 111(m) of Customs Act, 1962 as also imposing a penalty of Rs. 95,000/- under Section 112(a) and 112(b) of the Act *ibid*.

2. The brief facts of the case are that the applicant arrived on 01.05.2016 at NSCBI Airport, Kolkata from Doha and was intercepted while he was walking through the green channel towards the exit gate. His personal search and search of his baggage resulted in the recovery of 4 pieces of gold weighing 320.6 grams valued at Rs. 9,10,504/- concealed in his under garments and 8000 sachets of RMD Guthka valued at Rs. 40,000/- concealed in his baggage. The applicant, in his statement recorded under Section 108 of the Customs Act, 1962, admitted the concealment of the offending goods. The Joint Commissioner of Customs, Kolkata, vide aforesaid OIO dated 16.08.2016, ordered absolute confiscation of the seized gold items and Guthka sachets and imposed penalty of Rs. 95,000/- under Section 112 of the Customs Act, 1962. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) which was rejected. The Revision application has been filed on the ground that the order of the Commissioner (Appeals) is erroneous as the gold and Guthka are not prohibited items and should be allowed to be

redeemed on payment of redemption fine in terms of Section 125 of the Customs Act, 1962.

3. Personal hearing in the matter was held on 29.01.2021. Sh. Nirmal Sarkar, Superintendent, attended the hearing on behalf of the respondent and supported the orders of lower authorities meriting rejection of the revision application. The applicant has submitted his written submission dated 28.01.2021 in which he has stated that he will not attend hearing and requested for the revision application to be allowed.

4. The Government has examined the matter. The applicant has not disputed the fact that the recovered gold was concealed by him in his under garments which clearly shows his malafide intention of smuggling the said gold. He admitted in his voluntary statement recorded under Section 108 of Customs Act, 1962 that he had brought the gold from Dubai for his sister's marriage and that he brought Gutkha for pecuniary benefit. He was a frequent visitor and as per his admission used to carry clothes, for monetary gains. Thus, it is a case of outright smuggling where the applicant tried to evade detection by way of concealment in an ingenious manner.

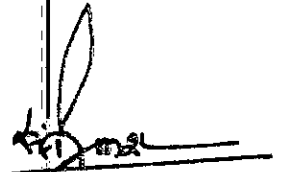
5. The question of law raised by the applicant is that the import of gold and gutkha is not 'prohibited'. The law on this issue is settled by the judgement of Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collection of Customs, Calcutta & Ors {1971 AIR 293}. Hon'ble Supreme Court held that 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 Joint Commissioner, in

Paras 19, and 20 of the O-I-O dated 27.02.2016, 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. Similarly, in para 22 of the OIO, the position in respect of restriction in respect of Gutkha have been brought out. It is also stated therein that the Gutkha was brought in commercial quantity. 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 and gutkha could have been 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'. Further, it cannot be disputed that gutkha recovered from the applicant was in commercial quantity (8000 sachets).

6. 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 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, with intent to evade Customs Duty by walking through the Green Channel and not declaring the goods. 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. Thus, applying the ratio of P. Sinnasamy (Supra), the discretion exercised by the original authority does not merit interference.

7. In view of the above, the Government upholds the impugned Order-in-Appeal. The revision application is rejected.



(Sandeep Prakash)

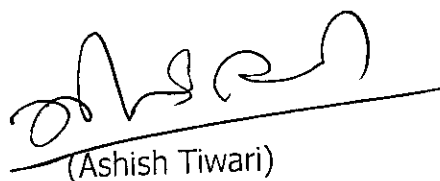
Additional Secretary to the Government of India

Mr. Sheikh Salim Ahmed, S/o Sheikh Atiq Ahmed  
468, 1<sup>st</sup> Floor, Gali Matia Mahal, Jama Masjid, Delhi-110006  
ORDER NO. 26 / 21-Cus dated 07-02-2021

**Copy to:-**

1. The Commissioner of Customs, Airport, Kolkata.
2. The Commissioner of Customs (Appeals), Kolkata.
3. Guard File.
4. Spare Copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner.