

SPEED POST



F.No. 375/35/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...05/2/21

Order No. 30/21-Cus dated 03-02-2021 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/41/2018 dated 16.02.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Muthusamy Samykannu

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

ORDER

A Revision Application No. 375/35/B/2018-RA dated 18.04.2018, has been filed by Mr. Muthusamy Samykannu, (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/41/2018 dated 16.02.2018, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. 85/Adj./2015 dated 18.08.2015, wherein eight pieces of yellow colour rod (made of gold), which were concealed in tennis rackets, collectively weighing 1168 grams and valued at Rs. 32,22,512/-, have been confiscated. The adjudicating authority has imposed a penalty of Rs.4,80,000/- 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 18.03.2014 at IGI Airport from Singapore and was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person and of his baggage eight pieces of yellow colour rod (made of gold), which were concealed in tennis rackets, were recovered from his possession. The gold bars, weighing 1168 grams, were appraised at Rs. 32,22,552/- by the Jewellery Appraiser at IGI airport. Applicant in his statement dated 19.03.2014 admitted to the recovery of gold articles from his possession and stated that he had carried the tennis rackets in which gold was concealed for an unknown person who had paid him Rs. 5000/- for this work.

3. The revision application has been filed canvassing that the gold is not a prohibited item and hence may be released on payment of redemption fine and penalty. It is also contended that the impugned OIA is not a speaking order.

4. Personal hearing was granted on 07.01.2020, 24.01.2020, 20.01.2021 and 02.02.2021 . Sh. R.P. Bairwah, Superintendent, appeared on behalf of the department on 20.01.2021. He supported the orders of the lower authorities and prayed that revision application filed by the applicant should be rejected. None appeared on behalf of the Applicant and nor any request for any further adjournment has been received. Hence, the case is taken up for final decision.

5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the revision application, it is evident that the impugned gold articles were recovered from the applicant. He 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 has left Column 9 (Total value of dutiable goods imported) blank and did not declare any gold items in Column 10(ii) and 10(iii). Further, the applicant has admitted the fact of non-declaration in his statement tendered under Section 108 of Customs Act, 1962.

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 the burden of proving that the subject goods were not smuggled is on the PAX from whom the impugned goods are recovered in terms of Section 123 of Customs Act, 1962 which the applicant failed to do.

7. 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 para 3.3 to para 3.8 of the O-I-O dated 18.08.2015, has brought out

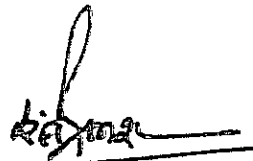
that the Gold is not allowed to be imported freely in baggage. It is permitted to be imported by a passenger subject to fulfillment of certain conditions. In the case of M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155)ELT423(SC)}, the Hon'ble Supreme Court has held that "if the conditions 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'.

8. 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. It is also noted that the applicant has, in his statement, claimed that the tennis rackets, in which gold was concealed, were given to him by an unknown person and he carried them for a small remuneration. In this light also, there is no merit in the applicant claiming redemption of goods that were handed over to him by an unknown person.

9. It is also contended by the applicant that the impugned OIA is not a speaking order and, therefore, it cannot be sustained. Upon careful examination, the Government finds that the impugned OIA is a speaking order that decides the issues raised with cogent reasons.

10. 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

1. Mr. Muthusamy Samkannu, R/O – H. No. 50/5, Kattu Mariyamman Kovil Street, Thuvrankurichi, Village and Post Office Trichy Rural – 621314

Order No. 30/21-Cus dated 03-02-2021

Copy to:

1. Commissioner of Customs (Airport & General), IGI Airport Terminal-3, New Delhi-110037
2. Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi
3. Additional Commissioner of Customs, IGI Airport, New Custom House, New Delhi
4. PA to AS(RA)
5. Guard File.

6. Spare Copy.

ATTESTED .

N.D.

(Nirmala Devi)
Section Officer (Revision Application)