

SPEED POST



F. No. 372/52/B/2018-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 18/2/21

ORDER NO. 42/21-Cus dated 17-2-2021 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/1298/2018 dated 06.07.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : Mr. Nirbed Kumar Patiala

RESPONDENT : Commissioner of Customs (Airport), Kolkata.

ORDER

A Revision Application No. F. No. 372/52/B/2018-R.A. dated 21.08.2018 has been filed by Mr. Nirbad Kumar, Patiala (hereinafter referred to as the applicant) against Order-in-Appeal No. KOL/CUS/(A/P)/AA/1298/2018 dated 06.07.2018, passed by the Commissioner of Customs (Appeals), Kolkata. The Order-in-Appeal has upheld the Deputy Commissioner's Order-in-Original No. 65/2017 DC dated 10.11.2017 absolutely confiscating three melted cut pieces of gold and one gold chain collectively weighing 86.7 grams and valued at Rs. 2,58,366/- under Sections 111(d), 111(i) and 111(l) of Customs Act, 1962 as also imposing a penalty of Rs. 52,000/- under Section 112(a) and 112(b) of the Act *ibid*.

2. The brief facts of the case are that the applicant arrived on 22.02.2016 at NSCBI Airport, Kolkata from Bangkok and was intercepted while he was passing through the green channel. His personal search resulted in the recovery of 3 melted cut pieces and one chain of gold, collectively weighing 86.7 grams, valued at Rs. 2,58,366/- concealed in his wallet. The applicant, in his statement recorded under Section 108 of the Customs Act, 1962, on 22.02.2016, admitted that he had brought the said gold items to India for earning money. The Deputy Commissioner of Customs, Kolkata, vide aforesaid Order-in-Original dated 10.11.2017, ordered absolute confiscation of the seized gold items and imposed penalty of Rs. 52,000/- 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 items were confiscated without giving any option of redemption in terms of Section 125 of the Customs Act, 1962 and with a prayer that items

be released on payment of fine and on payment of duty on CIF value basis under Baggage Rules.

3. Personal hearing in the matter was held on 12.02.2021. Ms. Subarno Dutta, Superintendent, attended the hearing on behalf of the respondent and supported the orders of lower authorities meriting rejection of the revision application. The applicant's authorized Consultant, Sh. Barinder Singh, has submitted his written submission dated 11.12.2020 wherein it has been stated that he will not attend hearing and requested for the revision application to be allowed on the grounds mentioned therein.

4. The Government has examined the matter. The applicant has admitted in his voluntary statement recorded under Section 108 of Customs Act, 1962 that he purchased the gold items from Bangkok to sell them in India for earning money which was never retracted. The gold was never declared to the Customs on arrival and it was attempted to be illegally brought into India. The Commissioner (Appeals) has termed the confiscated gold as 'prohibited goods' which is tenable. 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". Gold is permitted to be imported by a passenger subject to fulfilment of certain conditions which has not been done in this case.

5. 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 not declaring them, 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.

6. The Government also observes that the applicant is a repeat offender. The Government has recently passed Order No. 14/2020-Cus dated 14.12.2020 in his own case wherein he attempted to smuggle out foreign currency equivalent to Rs. 6,65,160/- . The applicant was penalized for this offence and the foreign currency was absolutely confiscated.

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

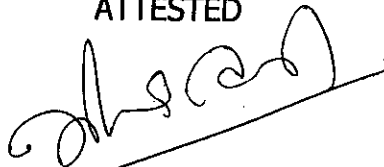
Mr. Nirbed Kumar, S/o Jain Kumar Garg
H. No. 19/547, Moran Wali Gali, Patiala-147001

ORDER NO. 42/ 21-Cus dated 17-2-2021

Copy to:-

1. The Commissioner of Customs, Airport, Kolkata.
2. The Commissioner of Customs (Appeals), Kolkata.
3. Guard File.
4. Spare Copy.
5. PS to AS (RA)

ATTESTED



(Ashish Tiwari)

Assistant Commissioner.