

SPEED POST



F. No. 372/49/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 22/2/21...

ORDER NO. 46 / 21-Cus dated 19-02-2021 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/806/2018 dated 01.05.2018, passed by the Commissioner of Customs (Appeals), Kolkata.

APPLICANT : Mr. Pradeep Kumar Chand, Kolkata.

RESPONDENT : Commissioner of Customs (Airport), Kolkata.

ORDER

A Revision Application No. F. No. 372/49/B/2018-R.A. dated 11.07.2018 has been filed by Mr. Pradeep Kumar Chand, Kolkata (hereinafter referred to as the applicant) against Order-in-Appeal No. KOL/CUS/ (A/P)/AA/806/2018 dated 01.05.2018, passed by the Commissioner of Customs (Appeals), Kolkata. The impugned Order-in-Appeal upholds the Additional Commissioner's Order-in-Original (OIO) No. 046/2017 ADC dated 12.05.2017 absolutely confiscating one piece of gold bangle, weighing 188.700 grams valued at Rs. 5,15,151/-, 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 01.05.2016 at NSCBI Airport, Kolkata from Bangkok and was intercepted while he was passing through the green channel towards the exit gate. At the exit gate, he was asked by the Customs officers if he was carrying any gold items on his person or in his baggage to which he replied in negative. Thereafter, his personal search resulted in the recovery of one 24 Carat gold bangle, weighing 188.700 grams valued at Rs. 5,15,151/-, from his person. The applicant, in his statement recorded on 19.06.2015 under Section 108 of the Customs Act, 1962, admitted that he did not declare the gold bangle when enquired by the Customs officers on being intercepted. He also stated that the said gold bangle was bought by him in Bangkok and he had brought it for making bangles for himself and his son. He also admitted his mistake which was due to ignorance of rules. The Additional Commissioner of Customs, Kolkata, vide aforesaid OIO dated 12.05.2017, ordered absolute confiscation of the gold bangle 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 bangle should have been released for re-export on payment of redemption fine under Section 125 of Customs Act, 1962 as he was a tourist to India, being a Thai national.

3. Personal hearing in the matter was granted on 29.01.2021, 08.02.2021 and 18.02.2021. Sh. Nirmal Sarkar, Superintendent, attended the hearing on behalf of the respondent department on 29.01.2021 and 18.02.2021. He stated that the seized gold bangle was of 99.5% purity and jewellery is not made with such high purity gold. Hence the contention that the bangle was jewellery in the personal use of the applicant is incorrect. Further, in his statement before the Customs, the applicant had admitted that the gold bangle was to be used for making Karas for him and his son and thus the contentions made in the revision application are incorrect. No one appeared for the applicant and no request for adjournment has been received. As sufficient opportunities have been granted, the matter is taken up for disposal on the basis of facts available on record.

4. The Government has examined the matter. The applicant has not disputed the fact that the recovered gold was not declared by him to the Customs on his arrival. He admitted in his voluntary statement recorded under Section 108 of Customs Act, 1962 that he had brought the gold from Bangkok for making bangles for himself and his son. The applicant also admitted his mistake in the said voluntary statement.

5. It is observed by the Government that the contention of the applicant that the gold bangle worn by him was a piece of his personal jewellery does not hold ground because, as has been pointed out by the respondent, a jewellery item for regular use is not made with gold of 24 Carat purity. Moreover, as he admittedly brought the gold bangle for making bangles/karas for himself and his son, his malafide intention cannot be

overlooked. Thus, it is a case of outright smuggling where the applicant tried to evade detection by way of non-declaration.

6. The original authority has correctly brought out that, in this case, the conditions, subject to which gold can be legally imported, have not been fulfilled. Thus, following the law laid down by the Hon'ble Supreme Court in the cases of Sheikh Mohd. Omer [(197) 2 SCC 728] and Om Prakash Bhatia [2003-TIOL-06-SC-Cus], the seized gold item is nothing but "prohibited goods". The original adjudicating authority has denied the release of the gold bangle 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 gold 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. As regards the request for re-export of seized goods, the Government observes that in terms of Section 80 of Customs Act, 1962, the facility of temporary detention and subsequent re-export of prohibited goods is available only if "a true declaration has been made under Section 77" in respect of such goods. In the present case, admittedly, such a declaration was not made.

8. 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. Pradeep Kumar Chand, C/o Tanveer Hossain (Advocate),

No. 9/B, Nasiruddin Road, Kolkata-700 017.

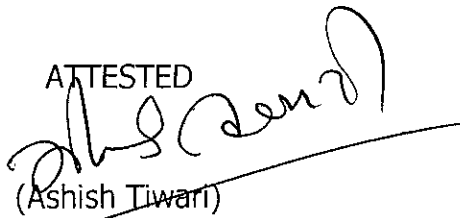
ORDER NO. 46 / 21-Cus dated 19-02-2021

Copy to:-

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

S. Pst to AS (RA)

ATTESTED



(Ashish Tiwari)

Assistant Commissioner.