

SPEED POST



F.No. 375/46/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-110066

Date of Issue. 2/3/21.

Order No. 49 /21-Cus dated 01-03-2021 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/320/2017 dated 24.08.2017, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Ram Kishor

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

ORDER

Revision Application No. 375/46/B/2018-RA dated 31.05.2018 has been filed by Mr. Ram Kishore, (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CC(A)Cus/D-I/Air/320/2017 dated 24.08.2017 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. 217-Adj/2015 dated 12.02.2016, vide which one gold bar, weighing 564 gms, recovered from the applicant, valued at Rs. 14,50,890/-, has been absolutely confiscated and free allowance has been denied to the Applicant. The adjudicating authority has also imposed a penalty of Rs.3,00,000/- on the applicant under Section 112 & 114AA of the Customs Act, 1962, which has been maintained in appeal.

2. The brief facts of the case are that the applicant arrived on 02.09.2014 at IGI Airport, from Hong Kong, and was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person and his baggage one gold bar, which was concealed inside the laptop that he was carrying, was recovered from his possession. The gold bar, weighing 564 grams, was appraised at Rs.14,50,890/- by the Jewellery Appraiser at IGI airport. The applicant in his statement, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of gold bar and revealed that the gold bar was given to him by one Mr. Shekhar in Bangkok to carry the same to India, and in return Mr. Shekhar offered him a good amount of money, to be handed over to a person at IGI Airport, Delhi.

3. The revision application has been filed canvassing that the seized gold is not a prohibited item and hence may be allowed to be released on payment of redemption fine and penalty. It is also contended that the Gold bar was brought by him for personal use and that the proceedings against him were false.
4. Personal hearing was held on 18.02.2021. Sh. D. S. Chaddha, Advocate, and Sh. Ram Kishor (Applicant) appeared for hearing. Sh. Chadha, made the submissions on behalf of applicant and reiterated the contents of the revision application. He stated that the gold was not concealed but was kept in the laptop bag. It was pointed out to him that the revision application and application for condonation of delay are incomplete in as much that the grounds for delay are not substantiated with evidence i.e. Medical Certificate; the copies of show Cause Notice, Panchnama and Order-in-Original are not placed on record. Sh. Chaddha undertook to submit documents, as above, by 22.02.2021. Sh. R.P. Bairwa, Superintendent, appeared on behalf of the department and prayed that the revision application may be rejected. Another Personal hearing was held on 26.02.2021. Sh. Chadha, Advocate, and Sh. Ram Kishor (Applicant) appeared. Sh. Chaddha submitted the copies of the Panchnama dated 02.09.2014, Show cause Notice dated 30.01.2015 and the Order-in-Original dated 16.02.2016. On merits, Sh. Chaddha requested for redemption of gold on payment of redemption fine, penalty and duty.
5. The instant RA has been filed with a delay of 15 days. Medical exigency has been pleaded for condonation. Delay is condoned.
6. The Government has examined the matter. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application, it is

evident that the impugned gold bar was concealed inside the silver color lenovo laptop that the applicant was carrying. Panchnama dated 02.09.2014 clearly establishes this fact. The applicant has in his statement recorded, under section 108 of the Custom Act, 1962, on 02.09.2014 and on 06.10.2014, admitted the facts brought out in the Panchnama. The applicant also 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 had not declared anything in Column 9 (Total value of dutiable goods imported) and also declared 'No' against the column 10(ii) and 10(iii) of the said slip. Therefore, the contention that the seized gold was brought by the applicant for bonafide use or that the proceedings against him are false, is incorrect.

7. 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 has failed to produce any evidence that goods were not smuggled and to the contrary admitted that the gold bar was carried by him for another person for a monetary consideration. The manner of concealment, inside the laptop carried by him, also clearly establishes that the applicant had smuggled the seized gold. The applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123.

8. The question of law raised by the applicant is that the import of gold is not 'prohibited'. The Government observes that law on this issue is settled by the judgment of Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}. Hon'ble Supreme Court 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". The Additional Commissioner, in para 3.3 to 4.2 of the O-I-O dated 12.02.2016, 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. 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'.

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 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 correctly held that the applicant was not the owner of the goods and has refused to grant redemption. 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 with intention to evade customs duty and for monetary gains. Thus, applying the ratio of P. Sinnasamy (supra), the discretion exercised by the original

authority does not merit interference. The Government also notes that the decisions cited in support of the contention to allow redemption were decided in the facts relevant in those cases. Further, these decision are of a period prior to the detailed judgment in the case of P. Sinnasamy (supra).

10. Applicant has prayed that only a token penalty may be imposed. In the facts and circumstances of the case, Government considers that it would be in the interest of justice that penalty is reduced to Rs. 2,00,000/- from Rs. 3,00,000/-.

11. The revision application is disposed of accordingly, and the Commissioner (Appeals)'s order is modified in above terms.



(Sandeep Prakash)

Additional Secretary to the Government of India

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New Delhi 110059

Order No. 49/21-Cus dated 01-03-2021

Copy to:

1. The Commissioner of Customs (Airport & General), New Custom House, Delhi-110037
2. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, Delhi-110037
4. Sh. D.S. Chaddha, 92, GF Block V, Eros Garden, Faridabad - 121009
5. PA to AS(RA)
6. Guard File.

7. Spare Copy.



(Nirmala Devi)

Section Officer (Revision Application)