

SPEED POST



F.No. 375/40/B/2018-RA  
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-110066

Date of Issue... 9/3/21...

Order No. 55/21-Cus dated 09-3-2021 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/12/2018 dated 16.01.2018, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr.Mohiddin Shoukat Bepari

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

---

**ORDER**

Revision Application No. 375/40/B/2018-RA dated 04.05.2018 has been filed by Mr. Mohiddin Shoukat Bepari, (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CC(A)Cus/D-I/Air/12/2018 dated 16.01.2018, 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. 217-230/Adj/2015 dated 25.02.2016, vide which four gold bars, concealed in shoes which were worn by the applicant, weighing 4000 gms and valued at Rs. 1,02,48,000/-, have been absolutely confiscated and free allowance has been denied to the Applicant. The adjudicating authority has also imposed a penalty of Rs.20,04,000/- 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 09.09.2014 at IGI Airport, from Dubai, and was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person and his baggage, four gold bars were recovered from the shoes worn by him. The gold bars, weighing 4000 grams, were appraised at Rs. 1,02,48,000/- by the Jewellery Appraiser at IGI airport. The applicant in his statement dated 09.09.2014, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of gold bars and revealed that these gold bars were given to him by one Mr. Lekhi in Dubai to carry the same to India; that in

return Mr. Lekhi offered him an amount of Rs. 10,000/-; and that these were to be handed over to one Sh. Gagan Deep at the taxi stand outside the 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 bars were brought by him for personal use and that the proceedings against him were false.

4. Personal hearing in virtual mode was held on 8.02.2021, 1.03.2021 and 05.03.2021. Sh. Rahul Raheja, Advocate, appeared for hearing on 01.03.2021. Sh. Raheja, requested for 03 days time for furnishing a condonation of delay application, with sufficient cause; to furnish evidence of having paid the application fee of Rs. 1,000/-; to affix the requisite Court Fee Stamps. Applicant deposited the necessary fees of Rs. 1,000/- and also affixed the requisite Court Fee Stamps. Apart from that applicant also submitted the condonation of delay application stating that delay has occurred due to some personal difficulty of the counsel who could not get the application signed from applicant, in time. Personal hearing was again held on 05.03.2021. Sh. Raheja, made the submissions and stated that the applicant is the owner of the goods and not a mere carrier; that the applicant is a person of small means and penalty imposed is on a higher side; and that the gold should be allowed to be redeemed on payment of appropriate fine, penalty and duty. Sh. R.P. Bairwa, Superintendent, appeared on behalf of the department on 08.02.2021 and prayed that the revision application may be rejected.

5. The instant RA has been filed with a delay of 03 days. Personal difficulty of counsel 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 bars were concealed in the shoes and the applicant 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 nothing in column no. 10 (ii) and 10 (iii) against any gold jewellery and gold bullion of the said slip. Further, the applicant has admitted the recovery of gold bars from him and the fact of non-declaration in his statement tendered under Section 108 of Customs Act, 1962.

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 the gold bars were not smuggled and to the contrary admitted that the gold bars were carried by him for another person for a monetary consideration. The manner of concealment, inside the shoes worn by him, also clearly establishes that the applicant had smuggled the seized gold bars. The applicant's contention that he is the owner of the gold bars is not acceptable in view of the fact that in his statement dated 09.09.2014, he himself had admitted that the gold bars were carried by him for someone else in India for monetary consideration. It is also on record that the applicant has never retracted the said statement at any stage. Further, no other documentary evidence has been produced to established bonafide ownership. 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 3.5 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 light of smuggling by way of concealment. 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 disputed ownership and due to attempted smuggling by way of concealment, for monetary gains. Thus, applying the ratio of P. Sinnasamy (supra), the discretion exercised by the original authority does not merit interference.

10. Reduction in amount of penalty has been prayed on the grounds that the applicant is a person of small means. In the personal hearing, the release of goods has also been solicited, inter-alia, claiming that the applicant is the owner of the goods. Thus, on one hand, it is claimed that the applicant is the owner of goods, valued at Rs. 1,02,48,000/- ( at the relevant time) and is, even on date, in a position to redeem the goods on payment of Fine, Penalty and duty and, on the other hand, the applicant is claiming himself to be person of small means. Thus, the contentions are contradictory. As such, there is no merit in the plea to reduce the penalty amount, which is just and fair in the facts and circumstances of the case.

11. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Mr. Mohiddin Shoukat Bepari,  
H.No. 143, Next to football ground  
Duller Mapusa B Ardz North Goa 403507

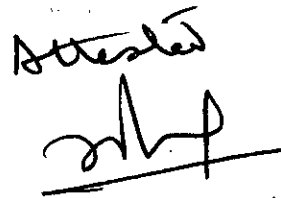
Order No. 55/21-Cus dated 09-3-2021

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. Rahul Raheja, Advocate, Ch. No. 142 A, Patiala House Court, New Delhi - 11001
5. PA to AS(RA)
6. Guard File.
7. *Spare Copy.*

(Nirmala Devi)

Section Officer (Revision Application)



आशीष तिवारी / ASHISH TIWARI  
सहायक आयुक्त/Assistant Commissioner  
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क  
CGST, Central Excise & Customs  
राजस्व विभाग / Department of Revenue  
वित्त मंत्रालय / Ministry of Finance  
भारत सरकार / Government of India  
नई दिल्ली / New Delhi