

SPEED POST



F.No. 375/72/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..22/6/21

Order No. 112/21-Cus dated 22-6-2021 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/113/2018 dated 23.03.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Hitesh Miglani, New Delhi

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

ORDER

A Revision Application No. 375/72/B/2018-RA dated 13.08.2018 has been filed by Mr. Hitesh Miglani, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/113/2018 dated 23.03.2018 passed by the Commissioner of Customs (Appeals), New Customs House, New Delhi. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi, bearing no. 32/ADC//DR/2017 dated 07.03.2017, wherein silver jewellery, weighing 95 kgs (Net weight) and 98.849 kgs (Gross weight), and valued at Rs. 29,06,552/-, was absolutely confiscated. Besides, penalty of Rs.45,00,000/- was also imposed by the original authority 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 five person, namely, Mr. Ranjit Kumar Ozha, Mr Shaikh Shamimmuddin, Mr. Wasim, Mr. Istiaque Ali and Mr. Amit Kumar arrived, on 20.05.2016, at IGI Airport from Hongkong and were intercepted near the exit gate after they had crossed the Customs Green Channel. After search of their person and of their baggage various electronics items having value of Rs.2,20,53,542/- and silver jewellery, weighing 95 kgs (Net weight) and 98.849 kgs, having value of Rs.29,06,552/-, were recovered from their possession. Electronics items and silver jewellery, recovered from the passengers mentioned above, were seized under Section 110 of the Customs Act, 1962, under panchnama dated

21.05.2016. All the five passengers in their statement dated 21.05.2016, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of electronics items and silver jewellery and agreed with the contents of the panchnama dated 21.05.2016. They further stated that the goods imported were handed over by one Mr. Vikas in Hongkong, for carrying to India, for onward delivery to one Mr. Hitesh Miglani in India. In return, they were offered return ticket to Hong Kong and a sum of Rs. 5,000/- to each one of them; that they had smuggled the goods for pecuniary motive. Mr. Hitesh Miglani was, later, apprehended by Customs Officers outside arrival exit at IGI Airport. Mr. Hitesh Miglani, in his statement dated 21.05.2016, recorded under Section 108 of the Customs Act, 1962, agreed with the facts mentioned by all the five passengers in their statements dated 21.05.2016. He further stated that he had directed all the passengers to avoid red channel at the IGI Airport as he wanted to save the custom duty leviable on the seized goods. Adjudicating authority, vide OIO dated 07.03.2017, ordered for the absolute confiscation of silver jewellery and allowed the release of electronics items on payment of redemption fine of Rs. 30,00,000/- alongwith applicable duty. Besides a penalty of Rs. 45,00,000/- was also imposed on the Applicant. Aggrieved the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed canvassing that there was no concealment; that the silver imported is bonafide; that the import of the silver jewellery is not prohibited and, therefore, may be released on payment of redemption fine and appropriate duty. Further, the penalty imposed may be set aside or reduced.

4. Personal hearing, in virtual mode, was held on 18.06.2021. Ms. Priyanka Goel, Advocate, appeared on behalf of the Applicant and submitted that the Applicant has admitted his mistake and paid the penalty imposed upon him in full; that he had also got the goods (where redemption was allowed) released after paying fine and duty. The matter, now, only relates to seized silver jewellery (net weight 95 kgs) which has been ordered to be absolutely confiscated. In her submission, silver jewellery is not a 'prohibited item' and hence option to redeem the same should be granted. She also pleaded that in the current pandemic situation, the Applicant is in dire financial strait and, as such, redemption is merited on these grounds as well since he has admitted his guilt. Sh. Rajnish Kumar, Superintendent appeared on behalf of the respondent department and submitted that import of silver jewellery, in baggage, is permitted subject to certain conditions which have not been fulfilled in this case. Hence the silver jewellery is a 'prohibited' item and absolute confiscation should be maintained.

5. The revision application has been filed with a delay of 42 days. Misplacement of documents in the office of the Counsel has been pleaded as the reason for delay. Delay is condoned.

6. The Government has examined the matter. It is observed that the five passengers, who brought the silver jewellery on behalf of the Applicant, did not declare the jewellery brought by them under Section 77 of Customs Act, 1962 to the customs authorities at the airport. Further, they admitted to the recovery of silver

jewellery from them and the fact of non-declaration in their statements tendered under Section 108 of Customs Act, 1962. Applicant also admitted in his statement that the above mentioned five passengers had imported the silver jewellery on his instructions with the intent to evade duty.

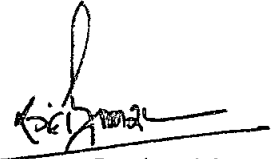
7.1 The question of law raised by the Applicant is that the import of silver jewellery is not 'prohibited'. Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293} has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term *"Any prohibition" means every prohibition. In other words all types of prohibition. Restriction is one type of prohibition*". The Additional Commissioner, in paras 8.3 to 8.5 of the O-I-O dated 07.03.2017, has brought out that the silver jewellery 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"*.

7.2 The original authority has correctly brought out that in this case the conditions subject to which silver jewellery could have been legally imported have not been fulfilled. Thus, following the ratio of the aforesaid judgments of 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, which has been assailed in the instant Revision Application. The Government observes that, in terms of Section 125 of the Customs Act, 1962, the option to release seized 'prohibited goods', on redemption fine, 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 case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344)ELT1154 (Mad.)}, the Hon'ble Madras High Court has, relying upon several judgments of the Apex Court, 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".*" In the present case, the original authority has refused to grant redemption in the background of attempted smuggling by concealment with intent to evade Customs Duty. It has also been observed by the original authority that objects of public policy, restricting import of silver, shall be frustrated if the redemption was permitted. Thus, the Order of the original authority, upheld by the Commissioner (Appeals) being a reasoned Order based on relevant considerations, does not merit interference.

9. It is observed that a penalty of Rs. 45,00,000/- has been imposed in respect of contraband totally valued at Rs. 2,49,60,094/-. The Government finds that the penalty imposed is just and fair in the facts and circumstances of the case.

10. In view of the above, revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

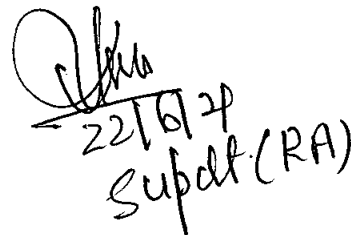
Mr. Hitesh Miglani,
C-4, Kalkaji,
New Delhi 110019

Order No. 112/21-Cus dated 22-6-2021

Copy to:

1. Commissioner of Customs, Airport & General, New Custom House, Near IGI Airport, New Delhi -110037
2. The Commissioner of Customs (Appeals), New Custom House, New Delhi-110037.
3. Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037.
4. Mr. Navneet Panwar & Associates, Advocate, 1140, LGF, Uday Park, new Delhi 110049
5. PA to AS(RA).
6. Guard File.
7. Spare Copy.

ATTESTED



22/6/21
Supdt. (RA)