

SPEED POST



F. No. 373/41/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...16/01/23

Order No. 12 /23-Cus dated 16-01-2023 of the Government of India passed by Shri 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. HYD-CUS-000-APP-036-17-18 dated 22.06.2017 passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad.

Applicant : Sh. Luqman Mohd., Delhi

Respondent : Pr. Commissioner of Customs, Hyderabad

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ORDER

A Revision Application No. 373/41/B/2018-RA dated 31.01.2018 has been filed by Sh. Luqman Mohd., Delhi (hereinafter referred to as the Applicant), against the Order in Appeal No. HYD-CUS-000-APP-036-17-18 dated 22.06.2017, passed by the Commissioner of Customs & Central Excise (Appeals), Hyderabad. The Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, Airport, Hyderabad, bearing no. 68/2016-Adjn.Cus(ADC) dated 05.07.2016, ordering confiscation of 04 gold pieces, totally weighing 466 gms and valued at Rs. 12,34,900/- under Sections 111(d) and 111(l) of the Customs Act, 1962. Besides penalties of Rs. 1,00,000/- & Rs. 1,00,000/- were also imposed on the Applicant, under Sections 112(a)(i) & 114AA, respectively, of the Act, *ibid*.

2. Brief facts of the case are that the Applicant arrived at Rajiv Gandhi International Airport, Hyderabad, on 23.03.2015, from Abu Dhabi and was intercepted by Customs officers at the exit gate of the Customs Arrival Hall after he had passed through the Green Channel on a reasonable belief that he was carrying contraband goods. Nothing incriminating was found after checking of his baggage. However, after examination of his person, 04 nos of gold pieces were found concealed in the socks that the Applicant was wearing. The Government Registered Valuer certified the 04 nos of gold pieces to be of gold with 99.9% purity (24 Kts), weighing 466 gms and valued the same to be Rs. 12,34,900/-. The Applicant in his statement dated 23.03.2015, recorded under Section 108 of the Customs Act, 1962, *inter alia*, stated that he had opted for Green Channel to avoid detection by the Customs Authorities and to evade payment of customs duty; that the gold was brought by him as carrier on instructions of one person by name Naseem; that on his previous visit to Abu Dhabi, Naseem met him and gave a business offer for carrying gold from Abu Dhabi to Hyderabad for which Naseem would pay him Rs. 15,000/-; that on his present visit, Naseem gave him gold in Abu Dhabi for further handing over at Delhi to an unknown person as per further instructions to be received from Naseem; that Naseem had not given him any bill/document related to gold; and that he intentionally left out SI

No. 9 blank and ticked 'No' at Sl No. 10(iii) in the 'Indian Customs Declaration Form' as he opted not to declare anything to Customs and wanted to evade customs duty.

3. The revision application has been filed, mainly, on the grounds that the Applicant being an NRI was legally entitled to bring the gold in question and he was falsely implicated; that penalty imposed is very high; that gold is not a prohibited item but became prohibited due to breach of law by the passenger, and, hence gold should be allowed to be redeemed on payment of fine, penalty and duty.

4. In the personal hearing held, in virtual mode, on 11.01.2023, Ms. Sangita Bhayana, Advocate appeared for the Applicant and reiterated the contents of RA. She highlighted that the Applicant was a NRI who brought the gold for his family purposes. Accordingly, she prayed for redemption to be allowed at nominal fine & penalty. No one appeared for the Respondent department nor any request for adjournment has been received.

5.1 The Government has carefully examined the matter. It is observed that the Applicant did not declare the gold brought by him, as required under Section 77 of Customs Act, 1962, to the Customs Authorities at the airport. The Applicant was intercepted when he was walking through the exit of the Customs Arrival Hall. He had declared the value of dutiable goods as Rs. 'NO' in his Customs Declaration Card. The Applicant had also admitted to the recovery of gold bars from him.

5.2 It is contended that the Applicant was a NRI and was legally entitled to bring gold into India. Copies of UAE Residence Visa have been placed on record. It is observed that the Visa indicates validity period from 15.03.2015 to 14.03.2017. However, it is to be noted that the Applicant, in the present case, had gone to UAE on 20.03.2015 and returned on 23.03.2015, i.e., he went to UAE after 05 days of issue of Visa and returned within 03 days. Thus, there was hardly any opportunity for the Applicant herein to stay at UAE, and earn any livelihood enough to purchase gold worth more than Rs. 12 lakhs for

bringing to India. In any case, entitlement to legally import a thing does not confer a right or entitlement on the person to smuggle that thing.

6.1 As per Section 123 of Customs Act 1962, 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. The Respondent did not declare the gold items, as required under Section 77 of the Act, *ibid*. Manner of concealment of gold pieces makes the intention of Applicant to smuggle apparent. No document evidencing ownership and licit purchase have also been placed on record. The Respondent has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*.

6.2 Further, the import of gold, in baggage, is allowed subject to certain conditions. Nothing has been brought on record to establish that, in the present case, these conditions have been fulfilled. Commissioner (Appeals) has, therefore, relying upon the judgments of Hon'ble Supreme Court in the case of Om Prakash Bhatia {2003 (155) ELT 423 (SC)} and that of Hon'ble Madras High Court in the case of Somyanathan Murugesan {2009 (247) ELT 21(Mad.)}, correctly held the goods to be liable to confiscation under Section 111 of the Act, *ibid*, as 'prohibited goods'. The Government finds that the Apex Court has, in the case of Raj Grow Impex LLP {2021-IOC-187-SC-CUS-LB}, held on the same lines. Hon'ble Madras High Court has, in the cases of Malabar Diamond Gallery P. Ltd. {2016 (341) ELT 65(Mad.)} and of P. Sinnasamy {2016 (344) ELT 1154(Mad.)}, specifically held that, if the conditions for import are not complied with, then import of gold falls under the definition of 'prohibited goods'.

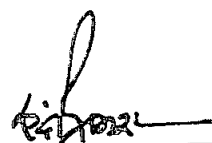
7. The original authority has denied the release of subject goods on redemption fine under Section 125 of Customs Act, 1962. The Government observes that, in terms of Section 125 *ibid*, the option to release 'prohibited goods', on redemption fine, is discretionary, as held by the Hon'ble Supreme Court 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 Raj Grow Impex (supra), the Hon'ble Supreme Court has held *"that when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; has to be based on relevant considerations."* Further, in the case of P. Sinnawamy (supra), the Hon'ble Madras High Court has held that *"when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason"."* Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], relying upon the judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], held that *"Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive."* Such a case has not been made out. Thus, the Commissioner (Appeals) has correctly refused to interfere in the matter.

8. The decisions relied upon by the Applicant are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

9. In the facts and circumstances of the case, and specifically keeping in view the ingenious manner of concealment, the quantum of penalty imposed is just and fair.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Luqman Mohd.
S/o Sh. Shahbaz Hussain
D.No. 3324, Gali Sawar Khan Kucha
Pandit Lal Kuan, Delhi-110006

Order No. 12/23-Cus dated /6-01-2023

Copy to:

1. Commissioner of Customs & Central Excise (Appeals), 7th Floor, Kendriya Shulk Bhawan, L.B. Stadium Road, Basheerbagh, Hyderabad-500004.
2. Pr. Commissioner of Customs, GST Bhawan, L.B. Stadium Road, Basheerbagh, Hyderabad-500004.
3. Ms. Sangita Bhayana, Advocate, Ch. No. 707, LCB-III, High Court of Delhi, New Delhi-110003.
4. PS to AS(RA).
5. Guard file.
6. ~~Spare Copy.~~
7. Notice Board.

Praveen Negi
16/01/2013

ATTESTED
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