

SPEED POST



F.No. 380/21/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-110 066

Date of Issue. 08/07/21

Order No. 123 /21-Cus dated 08-07-2021 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/180/2018 dated 25.06.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

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

Respondent : Ms. Hina Pervez Siddiqui, Mumbai.

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**ORDER**

A Revision Application No. 380/21/B/2018-RA dated 01.10.2018 has been filed by the Commissioner of Customs (Airport & General), New Custom House, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/180/2018 dated 25.06.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals) has modified the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi, bearing no. Adj-235/2015 dated 09.03.2016, and allowed redemption of 04 bangles, three chains and two rings (made of gold), recovered from the possession of Ms. Hina Pervez Siddiqui, Mumbai (herein after referred to as the respondent), weighing 648 grams and valued at Rs. 15,82,338/-, which had been absolutely confiscated by the original authority. Besides, the penalty of Rs.3,00,000/- under Section 112 & 114AA of the Customs Act, 1962, imposed by the original authority on the respondent, has been reduced by the Commissioner (Appeals) to Rs. 2,30,000/-.

2. The brief facts of the case are that the respondent arrived, on 05.06.2014, at IGI Airport from Bangkok and was intercepted near the exit gate after she had crossed the Customs Green Channel. After search of her person and of her baggage 04 pieces of bangles (one yellow and three coated white), three chains and two rings coated white, were recovered from her possession. The value of gold articles was appraised at Rs.15,82,338/- by the Jewellery Appraiser at IGI airport and these were seized under Section 110 of the Customs Act, 1962, under panchanama dated 05.06.2014. The respondent, in her statement dated 05.06.2014, recorded under

Section 108 of the Customs Act, 1962, admitted the recovery of gold articles and agreed with the contents of the panchnama dated 05.06.2014. She further stated that the gold articles were given to her by a person, namely, Mr. Muneer for onward delivery to someone else in Delhi; that she was fully aware that the import of gold was liable to Customs duty; and that the smuggling of the same was a punishable offence.

3. The revision application has been filed on the ground that the respondent had attempted to clear the gold articles without payment of duty; that the import of gold is not bonafide; that the import of the gold articles is prohibited and, therefore, release of the gold articles on payment of redemption fine and penalty is not correct.

4. Personal hearing was fixed on 19.05.2021, 14.06.2021 and 07.07.2021. Sh. Anil Kumar Meena, Superintendent, appeared on behalf of the Applicant in the hearings held on 14.06.2021 and 07.07.2021. In the hearing held, in virtual mode, on 07.07.2021, Sh. Meena stated that the respondent had attempted to smuggle gold by concealment as a carrier. Since these are prohibited goods, the order of absolute confiscation passed by the original authority should be restored. No one appeared for the respondent and no request for adjournment has been received. Since sufficient opportunities have been provided, the matter is taken up for disposal based on records.

5. The Government has examined the matter. It is observed that the respondent did not declare the gold articles brought by her under Section 77 of Customs Act, 1962 to the customs authorities at the airport. Further, the respondent has admitted the recovery of gold articles from her and the fact of non-declaration in her statement tendered under Section 108 of Customs Act, 1962.

6. 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."*

Thus, 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 respondent has failed to produce any evidence that the gold articles were not smuggled. The non declaration of gold articles by the respondent to the customs authorities, clearly evidences that the respondent had attempted to smuggle the seized gold articles. The applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123.

7.1 The Commissioner (Appeals) has held that import of gold articles is not prohibited. The Government observes that this finding of the Commissioner (Appeals) is in the teeth of law settled by various judgments of Hon'ble Supreme Court. In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293} the Apex 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 paras 3.3 to 3.5 of the O-I-O dated 09.03.2016, has brought out that the Gold 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"*. Further, in the case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341)ELT65(Mad.)], the Hon'ble Madras High Court has specifically held that *"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then*

*import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962-----."*

7.2 The original authority has correctly brought out that, in this case, the conditions subject to which gold articles could have been legally imported have not been fulfilled. Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods'. As such, the Commissioner (Appeals) has erred in holding that the impugned gold articles are not prohibited goods.

8. 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, in terms of Section 125 of the Customs Act, 1962, 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 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 with intent to evade Customs Duty. It

has also been observed by the original authority that objects of public policy, restricting import of gold, shall be frustrated if the redemption was permitted. Thus, the Order of the original authority, being a reasoned Order based on relevant considerations, does not merit interference.

9. In view of the findings above, the Government holds that the Commissioner (Appeals) has proceeded to allow redemption on the erroneous finding that impugned gold articles are not a prohibited item. He has also incorrectly interfered with the discretion exercised by the original authority by permitting redemption of these articles.

10. In view of the above, the impugned OIA dated 25.06.2018 is set aside to the extent of allowing redemption of confiscated gold articles on payment of fine, under Section 125 of the Customs Act, 1962. However, reduction in penalty is maintained. The revision application is disposed of accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs,  
Airport & General,  
IGI Airport, Terminal-3,  
New Delhi-110037

Order No. 123/21-Cus dated 08-07-2021

Copy to:

1. Ms. Hina Pervez Siddiqui, C/O 604, Raj Nagar, Coop HSG Society SV Road, Jigeshwari (W), Mumbai – 400102.
2. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037.

3. Additional Commissioner of Customs, IGI Airport, Terminal-3, Delhi-110037.
4. PA to AS(RA).
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED

*G. Bhatia*  
08/7/2021

**GULSHAN BHATIA**  
Superintendent