

SPEED POST



F. No. 375/113/B/2018-R.A.  
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...10/8/21.

ORDER NO. 149/21-Cus dated 10-8-2021 of the Government of India, passed by Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

SUBJECT : Revision Application filed under section 129DD of the Customs Act, 1962 against the Order-in-Appeal No.LUD-CUS-001-APP-170/18-19 dated 01.10.2018 passed by the Commissioner of CGST, Central Excise and Customs (Appeals), Jammu

APPLICANT : Mr. Suresh, Indore

RESPONDENT : Commissioner of Customs.(Preventive), Amritsar

\*\*\*\*\*

**ORDER**

A Revision Application No. F. No. 375/113/B/2018-R.A dated 31.10.2018 has been filed by Mr. Suresh, holder of Pakistani Passport No. AA5919811, presently residing at Indore (hereinafter referred to as the Applicant) against the Order-in-Appeal No. LUD-CUS-001-APP-170/18-19 dated 01.10.2018, passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Jammu, wherein Order-in-Original passed by Deputy Commissioner of Customs, LCS Attari Rail, Amritsar, bearing No. 189/CUS/ICP/IMP/DC/18-19 dated 28.06.2018, absolutely confiscating one gold biscuit, weighing 116.600 grams and valued at Rs. 3,35,979/-, has been upheld. Besides, penalty of Rs. 30,000/- was also imposed on the Applicant under Section 112(a) of the Custom Act, 1962, , which has been maintained in appeal.

2. Brief facts of the case are that the Applicant arrived from Pakistan, via LCS, ICP, Attari, District Amritsar, on 28.06.2018. On being asked by the Customs Officer, whether he was in possession of any Indian /Foreign Currency/Golds/Silver or any other prohibited goods, the Applicant replied in negative. After search of Applicant in person and of his baggage, 01 piece of gold biscuit, wrapped in a carbon paper and concealed inside the top of logo of jeans, was recovered from his possession. The value of seized gold was appraised at Rs.3,35,979/-. Upon waiver of Show Cause Notice, the Deputy Commissioner ordered absolute confiscation of the impugned gold biscuit and also imposed a penalty of Rs. 30,000/- 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 the gold imported is bonafide; that the Applicant is an illiterate person and was not aware of the rules; and that the gold, therefore, may be released on payment of redemption fine and appropriate duty or for re-export.

4. Personal hearing was held on 10.08.2021. Sh. R.K. Wadhawan, Advocate, attended the hearing on behalf of the Applicant and filed a written submission which was taken on record. He reiterated the contents of the revision application and the written submission filed at the time of personal hearing. None appeared on behalf of the Respondent nor any request for adjournment has been received. Therefore, the case is taken up for disposal as per records.

5. The Government has carefully examined the matter. It is observed that the Applicant did not declare the gold brought by him under Section 77 of Customs Act, 1962 to the customs authorities at the LCS, ICP, Attari. Also on being asked by the Customs Officers whether he carrying any dutiable goods, the Applicant had not declared anything.

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."*

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 recovered from him was not smuggled. The modus – operandi adopted that is to smuggle the gold and then clear it undetected, clearly evidences that the Applicant had attempted to smuggle the gold by concealing the gold in ingenious manner so as to avoid detection by the Customs authorities. It is also noted that no other documentary evidence has been produced to establish bonafide ownership. The applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123.

7.1 Commissioner (Appeals) has held that the gold biscuit was imported in violation of the provisions of the Customs Act, 1962, Baggage Rules, 2016 and the Foreign Trade Policy (2015-20). Therefore, it is squarely covered as 'prohibited goods', as per Section 2(33) ibid. The Government finds that these findings of Commissioner (Appeals) are in consonance with the law, on this issue, settled by the judgments of Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collector of Customs,

Calcutta & Ors {1971 AIR 293} and in the case of M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155)ELT423(SC)}. In its judgment dated 17.06.2021, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (CA Nos. 2217-2218 of 2021), the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia (supra) to hold that *"any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."*

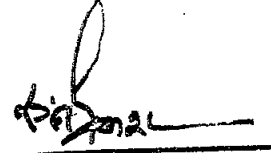
7.2 In the case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341)ELT65(Mad.)], the Hon'ble Madras High Court has summarized the position on the issues, specifically in respect of gold, as under:

*"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----."*

8. 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 UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (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; and has to be based on the relevant considerations"*. 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, redemption has been refused in the background of attempted smuggling by concealment with intent to evade Customs Duty i.e. for relevant and reasonable considerations. Thus, the Order of the original authority as upheld by Commissioner (Appeals), does not merit interference.

10. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

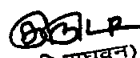
Mr. Suresh,  
24, Triveni Colony Extn., Indore,  
Madhya Pradesh

ORDER NO. 149/21-Cus dated 10-8-2021

Copy to:-

1. The Commissioner of Customs, Preventive, Customs House, Central Revenue Building, The Mall, Amritsar – 143001, Punjab
2. The Commissioner of CGST, Central Excise and Customs (Appeals), 32-OB, Rail Head complex, Jammu
3. Sh. R.K. Wadhawan, Advocate, H. No. 70, 2<sup>nd</sup> Floor Street No. 1, Sector-7, Ram Prastha, Green Vaishali, Ghaziabad, U.P.
4. PA to AS(RA)
5. Guard File.
6. Spare Copy.

ATTESTED

  
(LAKSHMI RAGHAVAN)  
अनुमाना अधिकारी / Section Officer (RA)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Dept. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi  
10.08.2021