

SPEED POST



F.No. 375/122/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..11/08/21.

Order No. 152/21-Cus dated 11-08-2021 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/436/ 2018 dated 28.09.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037
- Applicant : Mr. Faisal Ammangod Bovikana, Kasargod, Kerala.
- Respondent : Commissioner of Customs (Airport & General), New Delhi.
- .....

**ORDER**

A Revision Application No. 375/122/B/2018-RA dated 28.11.2018 has been filed by Mr. Faisal Ammangod Bovikana, Kasargod, Kerala (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/436/2018 dated 28.09.2018 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. 37-Adj/2016 dated 23.05.2016, wherein one silver coated metal plate (made of gold), totally weighing 585 grams and valued at Rs. 14,15,870/-, has been absolutely confiscated and free allowance has been denied to the Applicant. Besides, penalty of Rs.2,80,000/- 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. Brief facts of the case are that the Applicant arrived on 15.11.2014 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 of his baggage 01 piece of silver coated metal plate (made of gold), was recovered from his possession. The value of seized gold, of purity 999.0, was appraised at Rs.14,15,870/- by the Jewellery Appraiser at IGI airport. The 01 piece of gold, recovered from the Applicant, was seized under Section 110 of the Customs Act, 1962, under panchanama dated 15.11.2014. The Applicant in his statement dated 15.11.2014, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of 01

piece of gold and agreed with the contents of the panchanama dated 15.11.2014. He further stated that the said gold belonged to him and he had purchased the gold from Dubai; that he 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 canvassing that the Applicant was never involved in any case of smuggling on his previous 8 visits to Dubai; that gold may be released on payment of redemption fine and appropriate duty. Further, the penalty imposed under two heads i.e. under Section 112 and 114AA is not justifiable; and that penalty imposed is highly excessive and may be reduced.

4. Personal hearing, in virtual mode, was held on 10.08.2021. Sh. Suresh Chandran, Advocate, appeared on behalf of the Applicant and reiterated the contents of revision application. He requested that the gold may be released on imposition of redemption fine and penalty under Section 114 AA may be dropped. None appeared for the Respondent nor any request for the adjournment has been received. Therefore, the case is taken up for final decision based on 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 airport. In the Customs Declaration slip, the Applicant had not declared anything in Column 9 (Total value of dutiable goods imported) and had declared 'No' against column no. 10(ii) and 10 (iii). Further, the

Applicant has admitted the recovery of gold from him and the fact of non-declaration in his 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."*

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. It is also noted that no 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 The Government observes that the 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 3.3 to 3.5 of the O-I-O dated 23.05.2016, 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"*. In one of its latest 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 issue, 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----."*

7.3 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 ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods'.

8. The original authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962, which has been challenged in the instant RA. 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, 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 gold, 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.

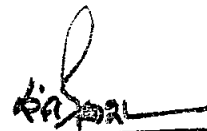
9. The original authority has imposed penalty under Section 112 & 114AA *ibid* which has been upheld in the impugned Order-in-Appeal. The imposition of penalty under Section 114AA has been assailed by the Applicant. Section 114 AA reads as under:

*‘Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.’*

The Government observes that the Applicant has signed and made a false declaration on the Customs Declaration Slip. This declaration was required to be made under Section 77 *ibid*. Thus, the imposition of penalty under Section 114 AA is merited.

10. The Government finds that the penalty imposed is also 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. Faisal Ammangod Bovikana,  
Ammangod House,  
P.O Muliya, Kasaragod,  
Kerala – 671542.

Order No. 152/21-Cus dated 11-08-2021

Copy to:

1. The Commissioner of Customs, Airport & General, 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. Sh. K.M. Suresh Chandran, Advocate, 9/426, Court Road, Kozhikode – 673001.
5. PA to AS(RA).
6. Guard File.
7. Spare Copy

ATTESTED

  
11/08/2021  
GULSHAN BHATIA  
Superintendent