

SPEED POST



F.No. 375/02/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: 17/12/2020

Order No. F-16/20-Cus dated 17-12-2020 of the Government of India passed by
Sh. Sandeep Prakash, Principal Commissioner & 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/ 588/ 2017 dated 29.12.2017 passed by the
Commissioner of Customs (Appeals), New Customs House,
Near IGI Airport, Delhi-110037

Applicant : Mr. Amardeep Singh Grover.

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

ORDER

A Revision Application No. 375/02/B/2018-RA dated 08.01.2018 has been filed by Sh. Amardeep Singh Grover, (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/ 588/ 2017 dated 29.12.2017, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals) has upheld the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. 96/ 2016 dated 28.07.2016 wherein one gold Kada which was worn by him on his right wrist and two rectangular shaped yellow color metal pieces of gold in sheet form which were sandwiched between the bottom layers of metal containers, were recovered, collectively weighing 601.80 grams valued at Rs. 14,17,239/-, have been confiscated and free allowance has been denied to the applicant. The adjudicating authority has imposed a penalty of Rs. 3,00,000/- under Section 112 & 114AA of the Customs Act, 1962 on the applicant, which has been maintained in appeal.

2. The brief facts of the case are that the applicant arrived on 15.03.2015 at IGI Airport from Bangkok and was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person and of his baggage one gold Kada and two gold rectangular shaped yellow color metal pieces were recovered from his possession. The gold articles were of 24 carat purity, weighing 601.80 grams and were appraised at Rs. 14,17,239/- by the Jewellery Appraiser at IGI airport. The applicant in his statement, recorded under Section 108 of the Customs Act, 1962, admitted the concealment and recovery of gold articles.

3. The revision application has been filed canvassing that the seized Gold is not a prohibited item and hence may be released on payment of redemption fine and penalty. It is further contended that the applicant is eligible to bring gold in terms of Notification

no. 12/ 2012- customs dated 17.03.2012 and is willing to pay duty. Further more, the penalty is not imposable under Section 114AA of the Customs Act, 1962.

4. Personal hearing was held on 09.12.2020. Sh. S.S. Arora, Advocate appeared on behalf of the applicant. He stated that the gold seized is not prohibited goods, Therefore the goods should be released on payment of redemption fine and penalty.

He further submitted that kada was in personal use for 10 years. Sh. Satish Panwar,

Superintendent appeared on behalf of the department and sought time for filing the

written reply to contradict the contention of the applicant that the kada was old and

used. Respondent/department was granted time up to 16.12.2020 to file their reply.

5. Respondent/department vide letter dated 16.12.2020 submitted their reply. It is stated that the applicant vide letter dated 17.04.2015 after one month from the date of seizure submitted that the Gold Kada was his personal & religious symbol and was wearing the same for the last more than ten years, however, there is no mention of invoice dated 03.03.2015. Further, applicant in reply dated 11.09.2015 to Show Cause Notice dated 03.08.2015 submitted a copy of the invoice dated 03.03.2015 and stated that he had brought the gold for making jewelry for his sister's marriage. There is no mention of personal use of Kada in this reply dated 11.09.2015.

As regard the non seizure of 02 Nos of metal containers of JIM BEAM Black Brand said to have been not seized, it is stated the said articles were duly seized and later on confiscated vide O-I-O dated 28.07.2016.

6. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application, it is evident that the impugned gold items were not recovered from the applicant. He did not declare the same 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 "no" in column 10(ii) & 10(iii) against any gold jewellery and gold bullion. Further, the applicant has admitted the fact of non-declaration in his statement tendered under Section 108 of Customs Act, 1962.

7. Section 123 of Customs Act 1962 reads as follows:

"123. Burden of proof in certain cases. — 1[

(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 2[and manufactures thereof] watches, and any other class of goods which the Central Government may by notification in the Official Gazette, specify."

Hence the observation of adjudicating authority and Commissioner (Appeals) that the burden of proof is on the PAX from whom the impugned goods are recovered is correct in terms of Section 123 of Customs Act, 1962.

A plain reading of Notification no. 12/ 2012- customs dated 17.03.2012 makes it clear that a passenger returning to India only after six months can bring one kg of gold on payment of customs duty. Since the stay of the applicant outside India was less than six months as per the copy of the passport submitted by the PAX, he does not fulfil the definition of an 'eligible passenger' as per condition no. 35 of

Notification no. 12/2012- customs dated 17.03.2012. Therefore, benefit of Notification no. 12/2012- customs dated 17.03.2012 is not available to him. Moreover, the benefit under Notification no. 12/2012- customs dated 17.03.2012 pertains only to the concessional rate of duty for the bonafide baggage. In the instant case, the gold articles seized cannot be termed as bonafide baggage as these were not declared by the applicant before the customs authorities and instead a conscious attempt has been made to smuggle by not declaring the same and by adopting the means of concealment.

9. The contention of the applicant that the gold kada is old and in use for 10 years is not substantiated by any evidence. Moreover, the jewellery appraiser in his report has not mentioned the same as old and used. Further, it would appear that the applicant has been taking inconsistent stand, in this regard before the lower authorities, as brought out in the department's letter dated 16.12.2020. Hence, this contention of the applicant does not merit consideration.

10. The question of law raised by the applicant is that the import of gold is not 'prohibited'. The law on this issue is settled by the judgement of Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collection of Customs, Calcutta & Ors [1971 AIR 293]. Hon'ble Supreme Court 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 28.07.2016, 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". 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 law laid down by the Apex Court, there is no doubt that the subject goods are 'prohibited goods'.

11. Hon'ble Madras High Court in the case of Commissioner of Customs (Air) Chennai-I vs. Samynathan Murugesan [2009 (247) E.L.T. 21 (Mad.)] relied on the definition of 'prohibited goods' given by the Apex Court in case of Omprakash Bhatia Vs. Commissioner of Customs, Delhi Supra [2003(155) ELT 423 (SC)] and has held as under:-

"In view of meaning of the word "prohibition" as construed laid down by the Supreme Court in Om Prakash Bhatia case we have to hold that the imported gold was 'prohibited goods' since the respondent is not an eligible passenger who did not satisfy the conditions".

The Apex Court has affirmed this order of Madras High Court (2010(254)ELT A 15 (Supreme Court)). The ratio of aforesaid judgment is squarely applicable to the facts of the present case.

12. The original adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962, as the applicant attempted to smuggle the same with the intention to evade duty. The Government observes that the option to release seized goods on redemption fine, in respect of "prohibited goods", 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 present case, the original authority has refused to grant redemption as the applicant attempted to smuggle the goods which were not bonfide baggage, with intent to evade Customs Duty by walking through the

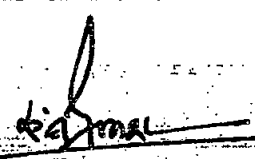
Green Channel and not declaring the goods in the Customs Declaration slip. In the facts and circumstances of the case, the decision not to allow redemption is well founded.

13. 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 causes to intentionally make, 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.

14. In view of the above, the Government upholds the orders of the lower authorities. The revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

1. Mr. Amardeep Singh, Grover, R/- 2183-15, Shora Kothi, Sabbzi-Mandi, Delhi.

2. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037

Order No. 16/20-Cus dated 17-12-2020

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037
2. Assistant Commissioner of Customs, IGI Airport, Terminal-3, Delhi-110037
3. Sh. S.S. Arora, Advocate, B-1/71, Safdrjung Enclave, New Delhi 110029
4. PA to AS(RA)
5. ✓ Guard File.

ATTESTED

NDM

(Nirmala Devi)
S.O (R. A.)