

SPEED POST



F. No. 373/225/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 04/05/23

Order No. 17/ 23-Cus dated 04-05-2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal TCP-CUS-000-APP-152-18 dated 08.08.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. Mohammed Abdullah, Chennai

Respondent : The Commissioner of Customs (P), Tiruchirappalli

.....

ORDER

A Revision Application, bearing No. 373/225/B/2018-RA dated 27.08.2018, has been filed by Sh. Mohammed Abdullah, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal TCP-CUS-000-APP-152-18 dated 08.08.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli, whereby the Commissioner (Appeals) has upheld the Order-in-Original No. 67/2018 dated 13.03.2018, passed by the Assistant Commissioner of Customs (Airport), Tiruchirappalli. Vide the aforementioned Order-in-Original, 02 nos of gold cut pieces of 24 carat purity, totally weighing 99.300 grams and collectively valued at Rs. 2,90,950/-, recovered from the Applicant, had been absolutely confiscated under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalty of Rs. 30,000/- was also imposed on the Applicant, under Section 112(a) & 112 (b) of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived at Tiruchirappalli Airport, from Kuala Lumpur, on 20.06.2017, when he was crossing the Customs Green Channel. On enquiry, it was found that he had not submitted any Customs Declaration Form. He stated that he did not bring any valuables or gold in any form with him either in person or in his baggage. Upon the search of his person, 02 nos. of gold cut pieces were recovered from his pant pocket. Upon being questioned as to why he did not declare the gold by filling the Customs Declaration Slip, he replied that since he wanted to clear the above said gold without payment of Customs duty, he concealed the gold in his pant pocket and admitted that he did not have valid permit/license/document for the legal import of the above said gold item. The Government approved assayer appraised the gold cut pieces as 02 cut gold pieces of foreign origin with 24 carat purity, totally weighing 99.300 grams and collectively valued at Rs. 2,90,950/-. The Applicant, in his statement dated 20.06.2017, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that he had been going to Malaysia as trader for the past 2 years; that he procured courier goods from Malaysia and handed over the same to the person concerned for which he would be getting an amount of around Rs. 15,000/- per month; that since the said amount was not enough to run his family, his friends advised him to buy gold from Malaysia and sell it at Chennai which may yield more profit; that he obtained loan from his relatives and went to Malaysia on 18.06.2017 and

purchased the said gold under seizure from unknown person in Malaysia; that as he did not want to pay the customs duty, he had not filled the Customs Declaration Form and had kept the gold concealed in his pant pocket; that he did not have any bill for the purchase of gold; that when Customs officers enquired whether any gold was in his possession, he stated in negative; and that he did not have any license or permit to import gold.

3. The revision application has been filed, mainly, on the grounds that the Applicant was not given sufficient opportunities while deciding the case; that he did not pass through the Green Channel and he was all along in the red channel; that import of gold is not prohibited and it can be released on payment of duty for re-export or released; and that penalty may be reduced.

4. Personal hearings in the matter were fixed on 05.04.2023, 21.04.2023 and 03.05.2023. No one appeared for either side nor any request for adjournment has been filed. However, Ld. Advocate for the Applicant has, vide letter dated 05.04.2023, requested to pass orders as per available records. Since sufficient opportunities have been granted and keeping in view the request made on behalf of the Applicant, the case is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. It is observed that the Applicant was intercepted while crossing Customs Green Channel without making any declaration in respect of gold carried by him. He declined the possession of gold even when inquired orally. In his statement also, the Applicant had admitted the recovery of 02 nos of gold cut pieces and that he intended to clear these goods without payment of Customs duty. Further, the entire proceedings have been covered under Mahazar, in the presence of two independent witnesses, which also corroborates the sequence of events. Hence, the contention of the Applicant that he did not pass through the Green Channel and that he was all along in the Red Channel is not sustainable.

5.2 The contention of the Applicant that he was not given sufficient opportunities while deciding the case is also untenable in as much as he was granted personal hearings on three dates i.e. 14.02.2018/17.02.2018/20.02.2018, vide letter dated 30.01.2018, by the original authority but he did not turn up on any of the dates nor did he submit any written reply in respect of the Show Cause Notice issued to him.

6. 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 Applicant did not declare the gold items, as stipulated under Section 77 of the Act, *ibid*. No documents evidencing ownership and licit purchase were produced at the time of interception. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government agrees with the lower authorities that the seized gold items were liable to confiscation under Section 111 *ibid* and the penalty was imposable on the Applicant.

7.1 The Government observes that import of gold and articles thereof in baggage is allowed subject to fulfillment of certain conditions. In the present case, it is not even contended that these conditions were fulfilled by the Applicant herein. It is settled by a catena of judgments of Hon'ble Supreme Court that goods, in respect of which conditions subject to which their import/export is allowed are not fulfilled, are to be treated as 'prohibited goods'. [Ref: Sheikh Mohd. Omer {1983 (13) ELT 1439 (SC)}, Om Prakash Bhatia {2003 (155) ELT 423 (SC)} & Raj Grow Impex LLP {2021 (377) ELT 145 (SC)}]. Further, the Hon'ble Madras High Court (i.e. the Hon'ble jurisdictional High Court) has, in the cases of Malabar Diamond Gallery P. Ltd. {2016 (341) ELT 465 (Mad.)} and P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, taken this view specifically in respect of import of gold in baggage. Hence, there is no doubt that the goods seized in the present case are to be held to be 'prohibited goods'.

7.2 In view of the above, the contention of the Applicant that the offending gold items are not 'prohibited goods', cannot be accepted.

8.1 The Government observes that the original authority had denied the release of seized gold item on payment of redemption fine under Section 125 of Customs Act, 1962. It is settled by the judgment of 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.)], that option to release 'prohibited goods' on redemption fine is discretionary. 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. Sinnasamy (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)], 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."* In the present case, the original authority has ordered for absolute confiscation of the gold item, for relevant and reasonable considerations recorded in paras 25 to 30 of his Order. Therefore, keeping in view the judicial pronouncements above and the facts of the case, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

8.2.1 Further, as far as re-export of offending goods is concerned, the Government observes that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Customs Act, 1962, which reads as follows:

"Temporary detention of baggage.- Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his

isopur
"names"

8.2.2 On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of Deepak Bajaj {2019 (365) ELT 695 (All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export under Section 80 of the Act, *ibid*. In this case, the Applicant had made no written declaration in respect of the subject goods and made a false declaration when asked to do so orally. Further, the Hon'ble Delhi High Court has, in the case of Jasvir Kaur vs. UOI {2019 (241) ELT 521 (Del.)}, held that re-export "cannot be asked for as of right-----". The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to re-export."

8.2.3 Hence, the question of allowing re-export also does not arise.

9. In the facts and circumstances of the case, the quantum of penalty imposed is just and fair.

10. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


Sh. Mohammed Abdullah
No. 41/85, Angappan Naicken Street,
Mannady, Chennai-600001.

Order No. 171/23-Cus dated 04-05-2023

Copy to:

1. The Commissioner of Customs & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Smt. P. Kamalamalar, Advocate, No. 10, Sunkrama Street, 2nd Floor, Chennai-600001.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED



पूनाम गुग्गल / Poonam Guggal
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110068