

SPEED POSTS



F.No. 375/138/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... 14/9/21..

Order No. 182/21-Cus dated 13-9-2021 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/Airport/224/ 2018 dated
19.09.2018 passed by the Commissioner of
Customs (Appeals), IGI Airport, New Delhi.

Applicant : Shri Saddam Hussain, Muzaffarnagar.

Respondent: The Commissioner of Customs, IGI Airport, New
Delhi.

Hence, this appears to be an afterthought. He also admitted that the said gold packet was bought by him in Riyadh and tried to import the same by concealing in his under wear to evade customs duty. Thus, it is clear that the Applicant acted in a premeditated fashion and very cleverly concealed the gold to smuggle it.

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 the burden of proving that the subject gold items, were not smuggled, is on the Applicant from whom these were recovered. No evidence has been placed on record to rebut the presumption. On the other hand, the manner of concealment makes it apparent that the Applicant had attempted to smuggle the seized gold in a well thought out manner to avoid detection by the Customs authorities. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123 *ibid*.

7.1 The Applicant has contended that import of gold is not prohibited. The Government observes that the law on this issue is settled by the judgment of Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Others [1971 AIR 293] wherein it has been 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 para 16.1 and 16.2 of the Order-in-Original dated 25.10.2016, 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 Apex 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 its judgment dated 17.06.2021, in the case of M/s Raj Grow Impex LLP & Others

[2021-TIOL-187-SC-CUS-LB], 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, keeping in view the law laid down as above, there is no doubt that the subject goods are *'prohibited goods'*.

8. The Applicant has canvassed that the subject gold be released on payment of redemption fine. The original adjudicating authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act,

1962, as discussed in Paras 20, 21 and 22 of the Order-in-Original. The Government observes that 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 present case, the original authority has refused to grant redemption as the Applicant attempted to smuggle the goods by clever concealment, with intent to evade Customs Duty. 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; and has to be according to the rules of reason and justice; has to be based on 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 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'*". It is observed that the original authority has passed a well-reasoned order refusing to allow redemption. Hence, the discretion exercised by the original authority does not warrant interference.

9. As regards the penalty imposed on the Applicant, it is observed that in the facts and circumstances, the quantum thereof is just and fair.

10. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Saddam Hussain,
S/o Sh. Mustaqeem,
R/o VPO- Baghonwali,
Patti West, P.S. New Mandi, Muzzaffarnagar.

Order No. _ (82/21-Cus dated 13-9-2021

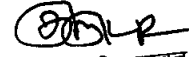
Copy to:

1. The Commissioner of Customs, IGIA, New Delhi-110 037.
2. The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037.
3. Sh. Amit Attri, Advocate, Ch. No. 952, Patiala House Court, New Delhi-110 001.
4. PA to AS(RA).
5. ~~Guard File.~~
6. spare copy.

ATTESTED

(Ashish Tiwari)

Assistant Commissioner (Revision Application)



(लक्ष्मी राघवन)
(LAKSHMI RAGHAVAN)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Revenue Department)
भारत सरकार
New Delhi