

SPEED POST



F. No. 380/09/B/2021-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. 29/06/22

Order No. 201 /22-Cus dated 29-06-2022 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)Customs/D-I/Air/1506/2020-21 dated 02.03.2021 passed by the Commissioner Customs (Appeals), New Customs House, New Delhi.

Applicant : Commissioner of Customs, Airport & General, New Delhi.

Respondent : Sh. Bablu, Sikar, Rajasthan.

ORDER

A Revision Application No. 380/10/B/2021-RA dated 02.06.2021 has been filed by the Commissioner of Customs, Airport & General, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Customs/D-I/Air/1506/2020-21 dated 02.03.2021 passed by the Commissioner Customs (Appeals), New Customs House, New Delhi. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the order of the Joint Commissioner of Customs, IGI Airport, New Delhi bearing No. 280/AS/JC/2017 dated 30.11.2017.

2. The brief facts of the case are that Sh. Bablu, Sikar, Rajasthan (hereinafter referred to as the Respondent) arrived, on 25.07.2016, at IGI Airport, New Delhi from Bahrain by Flight No. GF 134. While on way from the airport to his native place, the Respondent was intercepted, on 26.07.2016, by the police officers at Jhunjhunu and a gold bar of 250 grams, valued at Rs.

7,32,613/-, concealed in a re-chargeable torch, was recovered. Apart from the said gold bar, two Bills were also recovered from the rechargeable torch. In his statement dated 26.07.2016, tendered under Section 108 of the Customs Act, 1962, the Respondent admitted the recovery of gold bar by the police officers at Jhunjhunu which was concealed by him in the rechargeable torch; that the gold bar did not belong to him but was given to him by one Suresh whom he met at Riyadh; and that Suresh told him that he had concealed the gold bar in the battery of re-chargeable torch. The original authority, vide the aforesaid Order-in-Original dated 30.11.2017, ordered for absolute confiscation of seized gold under Section 111 of the Customs Act, 1962. A penalty of Rs 1,20,000/- was also imposed on the Respondent. In appeal, the Commissioner (Appeals) permitted redemption of confiscated gold on payment of a fine of Rs. 75,000/-. The penalty imposed on the Respondent was also reduced to Rs. 75,000/-.

3. The revision application has been filed on the ground that the Respondent had got through the green channel without declaring the recovered gold bar by ingeniously concealing the same in the battery of rechargeable torch; that gold is a prohibited item and should not have been allowed to be released on payment of redemption fine; and that the modification of the OIO by the Commissioner (Appeals) be annulled.

4. Personal hearing was fixed on 26.05.2022, 14.06.2022 and 29.06.2022. No one appeared for either side on any of the dates. The written submission dated 10.06.2022 and the email submission dated 28.06.2022 of the Respondent are taken on record. No request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for disposal.

5. The Government has examined the matter carefully. It is observed that the issue of liability to confiscation of the subject

gold stands concluded with the impugned OIA. The issues that are left to be decided, therefore, are:

(i) Whether the Commissioner (Appeals) could have allowed redemption in lieu of confiscation? and

(ii) Whether the reduction in penalty by the Commissioner (Appeals) is justified?

6.1 [The Government observes that import of gold, in baggage, is allowed subject to certain conditions. In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, it was held by the Hon'ble Supreme Court 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*". In the case of M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155) ELT 423(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". Further, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (2021-TIOL-187-SC-CUS-LB), 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."

6.2 In the case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT 65(Mad.)], the Hon'ble Madras High Court has specifically held that

"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-----."

6.3 In the present case, it is not even contended by the Respondent that the conditions subject to which gold could have been legally imported have been fulfilled. Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods'

7. The original adjudicating authority has denied the release of the gold on redemption fine under Section 125 of Customs Act, 1962. The Government observes that, in terms of Section 125 of the Customs Act, 1962, 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 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 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".*" Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], relying upon the judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], 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 denied redemption on the grounds of ingenious nature of concealment and as the Respondent has successfully smuggled the goods by crossing the Green Channel. The Government's policy objectives of restricting

the import of gold have also been taken into consideration. Thus, the original authority has exercised the discretion for reasonable and relevant considerations. Hence, the order of Commissioner (Appeals) allowing redemption of confiscated gold, cannot be sustained.

8. In the facts and circumstances of the case and specifically keeping in view the nature of concealment, the penalty imposed by the original authority was just and fair. Hence, the OIA cannot be sustained in this respect as well.

9. In view of the above, the revision application is allowed and the impugned OIA dated 02.03.2021 is set aside. Consequently, the OIO dated 30.11.2017 is restored.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of Customs,
IGI Airport, Terminal-3, New Delhi-110 037.

Order No. 201 /22-Cus dated 29-06-2022

Copy to:

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2. The Commissioner of Customs (Appeals), NCH, New Delhi-37.
3. PA to AS(RA).
- ✓ 4. Guard File.
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ATTESTED

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