

SPEED POST



F. Nos. 375/01/B/2019-RA  
375/03/B/2019-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...06/10/21

Order No. 206-207/21-Cus dated 06-10-2021 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 Applications filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC (A) CUS/D-I/Airport/566-567/2018 dated 22.11.2018 passed by the Commissioner of Customs (Appeals), New Delhi.
- Applicants : 1. Sh. Ram Pal Kaswan, Nagaur, Rajasthan.  
2. Sh. Ranjeet Singh, Sikar, Rajasthan.
- Respondent : The Commissioner of Customs, IGI Airport, New Delhi.
- .....

**ORDER**

The revision application no. 375/01/B/2019-RA dated 10.01.2019 and the revision application no. 375/03/B/2019-RA dated 10.01.2019 have been filed by Sh. Ram Pal Kaswan, Nagaur (hereinafter referred to as the Applicant – 1) & Sh. Ranjeet Singh, Sikar (hereinafter referred to as the Applicant – 2), respectively, against the Order-in-Appeal No. CC (A) CUS/D-I/Airport/566-567/2018 dated 22.11.2018 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, modified the Order-in-Original No. 152/AS/JC/2018 dated 30.03.2018 passed by the Joint Commissioner of Customs, IGI Airport, New Delhi, to the extent that gold articles, totally weighing 611.2 grams valued at Rs. 16,11,969/-, have been allowed to be redeemed on payment of redemption fine of Rs. 5,00,000/- to be cleared on payment of concessional rate of duty under notification no. 12/2012-Cus dated 17.03.2012. The Commissioner (Appeals) has also reduced the penalty of Rs. 2,00,000/- each which was imposed by the original authority on the Applicant 1 & 2 to Rs. 1,00,000/- each.

2. Briefly stated, the Applicant-1 arrived at the IGI Airport, New Delhi, on 09.04.2017, from Rome via Kuwait. On the basis of specific intelligence, he was intercepted while approaching the exit gate of arrival hall after crossing the green channel. On personal and baggage search of the Applicant-1, 8 yellow metal strips and 6 yellow metal medallions, collectively weighing 611.2 grams which appeared to be gold and mapped with black adhesive tape, were recovered. The Jewellery Appraiser found that 8 yellow metal strips were made of gold having 995 purity (totally

weighing 501.40 grams) and 6 yellow metal medallions were made of gold having 916 purity (totally weighing 109.80 grams), and the total value was appraised as Rs. 16,11,969/-. The Applicant-1 informed the customs officers that the recovered gold articles were to be handed over to the Applicant – 2 who would be waiting outside the Terminal-3, IGI Airport, New Delhi. Thereafter in the presence of panchas, the Applicant-2 was apprehended by the Customs officers. The recovered gold articles were seized under Section 110 of the Customs Act, 1962. The Applicant-1 in his statement dated 10.04.2017, recorded under Section 108 of the Customs Act, 1962, stated that he was working as a gardener in Italy with a monthly income of 550 Euros; that the said gold articles did not belong to him; that the Applicant – 2 had contacted him to carry a black color sling bag from Rome which contained these articles; and that he had no documents to support the licit possession of recovered gold. The Applicant-2 in his statement dated 10.04.2017, recorded under Section 108 ibid, stated that he was handicapped; that the Applicant-1 is his cousin; that the gold recovered from Applicant-1 actually belonged to him which was purchased by his friend at Rome; and that it was at his instance that his friend handed over the bag carrying gold articles to the Applicant-1. The Joint Commissioner of Customs, vide aforesaid Order-in-Original dated 30.03.2018, ordered absolute confiscation of the gold articles under Section 111(d), 111(i), 111(j), 111(l), 111(m) and 111(o) of the Customs Act, 1962 and also imposed a penalty of Rs. 2,00,000/- under Section 112 and 114AA of the Customs Act, 1962. In appeal, the Commissioner (Appeals) modified the Order-in-Original, as above.

3. The Applicant – 1 has filed the revision application pleading that the redemption fine of Rs. 5,00,000/- imposed by the Commissioner (Appeals) is on a higher side; and that the personal penalty is also on a higher side. The Applicant-2 has, in his revision application, contended that there was no finding by the original authority that he acquired possession of or otherwise physically dealt with the offending goods; and, hence, there is no question of any acts of omission and commission on his part. Therefore, penalty imposed may be set aside.

4. Personal hearing in the matter was held, in virtual mode, on 05.10.2021. Sh. S.S. Arora, Advocate appeared for the Applicant – 1 & 2. Sh. Arora reiterated the contents of the respective RAs and highlighted that RF is on a higher side. In respect of Applicant-2, Sh. Arora submitted that he had neither smuggled the gold nor handled it in any fashion and, hence, penalty could not have been imposed on Applicant-2 under Section 112. Sh. Rajnish Kumar, Superintendent appeared for the department and submitted that it is a case of outright smuggling and that RF imposed is appropriate. As regards Applicant-2, Sh. Rajnish Kumar submitted that imposition of penalty is justified as Applicant-2 was the mastermind behind the smuggling.

5.1 The Government has carefully examined the matter. It is observed that the Commissioner (Appeals) has proceeded to permit the redemption of seized gold articles by holding that the said articles were not 'prohibited goods'. The Government finds that this ground taken by the Commissioner (Appeals) is incorrect in law in as much as the original authority has, in para 3.3 and 3.4 of the Order-in-Original dated

30.03.2018, brought out that gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfillment of certain conditions, which have not been fulfilled in this case. 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*". 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"*. In its 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.*" Further, 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-----."*

Therefore, the finding of the Commissioner (Appeals) that the seized gold articles were not 'prohibited goods' is incorrect. The Commissioner (Appeals) has thereafter proceeded to offer redemption of the offending goods under Section 125, as is mandatory in case of goods which are not 'prohibited goods'. On the other hand, the option to redeem 'prohibited goods', under Section 125, is discretionary. The original authority had refused to grant redemption for the reasons stated by her. The discretion exercised by the original authority could have been interfered with only by following the law laid down in *Raj Grow Impex (supra)* and in *Commissioner of Customs (Air.), Chennai-I vs. P. Sinnasamy* {2016 (344) ELT 1154 (Mad.)}. As such, the Government observes that the Commissioner (Appeals) has permitted redemption on a legally flawed finding that the offending goods were not 'prohibited goods'. At the same time, it is also observed that the redemption could have still been permitted by the Commissioner (Appeals), as per law, after testing the discretion exercised by the original authority on the touchstone of dictum in *Raj Grow Impex (supra)* and *P. Sinnasamy (supra)*.

5.2 In view of the above, it will be in the interest of justice if the matter is remanded to the Commissioner (Appeals) to examine the matter of redemption afresh, in light of the observations above. The issues of quantum of redemption fine and penalty raised by the Applicant-1 are also kept open for the Commissioner (Appeals) to examine afresh and decide.

5.3 The Applicant-2 has submitted that he had committed no acts of omission or commission which made the goods liable to confiscation and, hence, no penalty should be imposed on him. However, it is an admitted fact that the offending gold articles belonged to the Applicant-2 and it was at his instance that the Applicant-1 had carried the gold from Rome. Therefore, Applicant-2 cannot deny his culpability in the matter. As such, penalty imposed on Applicant-2 does not merit any interference.

6. In view of the above, the revision application no. 375/01/B/2019-R.A. filed by Applicant-1 is disposed of by way of remand to the Commissioner (Appeals) for decision afresh, as per directions above. The revision application no. 375/03/B/2019-R.A. filed by the Applicant-2 is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

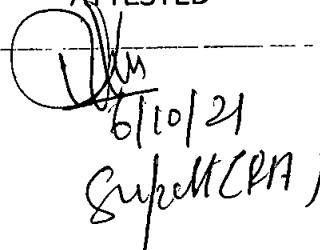
1. Sh. Ram Pal Kaswan,  
R/o VPO, Malgaw Distt. Nagaur  
Rajasthan – 341001.
2. Sh. Ranjeet Singh,  
R/o 76, Kothi Ke Pass,  
Rookansar, Sikar, Rajasthan – 331024.

Order No. 206-207/21-Cus dated 06-10-2021

Copy to:

1. The Commissioner of Customs, IGI Airport, Terminal-3, New Delhi – 110037.
2. The Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi – 110037.
3. Sh. S.S. Arora, Advocate, B1/71, Safdarjung Enclave, New Delhi – 110029.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



6/10/21  
Supt (RA)