

SPEED POST



F.No. 375/09/B/2018-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. 22/12/2020

Order No. 21/20-Cus dated 21-12-2020 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/485/2017 dated 31.10.2017 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037
- Applicant : Mr. Rashid Hasan
- Respondent : Commissioner of Customs (Airport & General), New Delhi
- .....

**ORDER**

A Revision Application No. 375/09/B/2018-RA dated 09.02.2018 has been filed by Sh. Rashid Hasan, (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/485/2017 dated 31.10.2017 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. 77-Adj/2015 dated 10.08.2015 wherein five gold bars which were concealed in five small packets wrapped with white papers from inside blue colour knee guard worn by him, were recovered, collectively weighing 583.20 grams and valued at Rs. 15,16,130/-, have been absolutely confiscated. The adjudicating authority has imposed a penalty of Rs. 2,27,000/- 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 01.04.2014 at IGI Airport from Hong kong and was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person and of his baggage five gold bars were recovered from inside the knee guard worn by the applicant. The gold bars, weighing 583.20 grams, were appraised at Rs. 15,16,130/- 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 bars.

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; that Section 111(d) is not applicable as the goods were not imported contrary to the provisions of Customs Act, 1962. The applicant has clean past antecedents and hence penalty should not be imposed. Imposition of Penalty under section 114 AA is not applicable as no incorrect declaration was made.

4. Personal hearing was held on 17.12.2020. 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. It is further contended that the redemption is not allowed on the grounds that the goods in question are not bonafide baggage and this would arise only in case of duty free allowance under Section 79, which is not being claimed here; that the applicant is otherwise eligible for import having remained in Saudi Arabia since 2008 and though he has not stayed abroad for 6 months at a stretch and concessional rate of duty is not claimed; that the applicant brought the goods for personal use. Further, he is not a carrier and, therefore, 2012(275)ELT 300(Ker) is not applicable in the facts of the present case. Shri Arora, therefore, requested that the goods may be released on payment of appropriate fine, duty and penalty. None appeared for the department. Since, no one appeared from the department and no request for adjournment has been made, therefore, the case is taken up for decision on the basis of facts available on record.

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 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 has left Column 9 (Total value of dutiable goods imported) blank and did not declare any gold items in Column 10. 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 burden of proof is on the PAX from whom the impugned goods are recovered.

8. 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 10.08.2015, 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'.

9. 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.

10. 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. The applicant has contended that the judgement in the case of Abdul Razak vs Union of India 2012(275)ELT300 (Ker) is not applicable in their case as he is not the carrier of the goods but has brought the gold for personal use. The Government is of the opinion that the ratio of judgment in Abdul Razak (Supra), relied upon by the Commissioner (Appeals), is squarely applicable in the instant case as the applicant has attempted to smuggle the gold by concealing it in the knee

guard and in contravention of various conditions for import of gold. Moreover, the question of redemption in case of 'prohibited goods' is discretionary, as already brought out here in above.

11. Further, the applicant has also contended that the redemption has not been allowed on the grounds that the goods in question are not bonafide baggage but in his submission this issue would arise only in case of claim of duty free allowance under Section 79. Bonafide baggage is construed to be one when the same has been legally imported for personal use of the passenger. However, in the instant case the applicant has attempted to smuggle the gold by resorting to concealment. Irrespective of claim of duty free allowance or otherwise, the consideration that the seized goods were not bonafide baggage is a relevant consideration for deciding the issue of redemption or otherwise, under Section 125.

12. 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 intentionally makes, 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.

13. In the Revision Application, imposition of penalty has also been assailed in view of the supposedly clean antecedents of the applicant. In the personal hearing, on the other hand, release of goods has been solicited inter-alia on payment of appropriate penalty. It is observed that the penalty of Rs. 2,27,000/- has been imposed under Section 112 and 114 AA which appears reasonable in the facts and circumstances of the case.

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

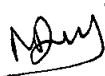
1. Mr. Rashid Hasan 119A, Kewal Puri, P.S.Civil Muzaffar Nagar, U.P..
2. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037

Order No. 21/20-Cus dated 21-12-2020

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



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