

SPEED POST



F. Nos. 375/02/B/2019-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... 13-10-21

Order No. 211/21-Cus dated 13-10-2021 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 Application filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC (A) CUS/D-I/Airport/536/2018 dated 31.10.2018 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicants : Sh. Sher Khan, Muzaffar Nagar.

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

ORDER

A revision application no. 375/02/B/2019-RA dated 04.01.2019 has been filed by Sh. Sher Khan, Muzaffar Nagar (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC (A) CUS/D-I/Airport/536/2018 dated 31.10.2018 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, modified the Order-in-Original No. 384/2017-18 dated 26.03.2018 passed by the Joint Commissioner of Customs, IGI Airport, New Delhi, to the extent that gold articles, totally weighing 232 grams valued at Rs. 6,34,004/-, have been allowed to be redeemed on payment of redemption fine of Rs. 2,20,000/- to be cleared on payment of baggage rate of duty. The Commissioner (Appeals) has also reduced the penalty of Rs. 1,20,000/- which was imposed by the original authority on the Applicant to Rs. 1,00,000/-.

2. Briefly stated, the Applicant arrived at the IGI Airport, New Delhi, on 24.10.2017, from Riyadh. He was intercepted near the exit gate of arrival hall and was diverted for detailed examination by way of Door Frame Metal Detector which resulted in detection of 02 gold bars of 24 carat purity, collectively weighing 232 grams and valued at Rs. 6,34,004/-. The said gold bars were confiscated absolutely under Section 111(d), 111(j), 111(l) and 111(m) and of the Customs Act, 1962 by the original authority vide the above said Order-in-Original dated 26.03.2018. A penalty of Rs.1,20,000/- was also imposed on the Applicant under Section 112 of the Act, *ibid*. Aggrieved, the Applicant filed an appeal before Commissioner (Appeals), who, vide the impugned Order-in-Appeal, modified the Order-in-Original, as above.

3. The instant revision application has been filed pleading that the redemption fine and penalty imposed by the Commissioner (Appeals) are on a higher side. Duty may also be charged @10.3% as the Applicant was an eligible passenger to import gold as per conditions of Notification no. 12/2012 dated 17.03.2012.

4. Personal hearing in the matter was held, in virtual mode, on 05.10.2021. Ms. Harsimran S. Kaur, Advocate appeared for the Applicant and reiterated the contents of the RA. She requested that redemption fine imposed by the Commissioner (Appeals) may be reduced and the goods may be allowed to be cleared on concessional rate of duty. None appeared for the Respondent department and no request for adjournment has also been received. Hence, the matter is taken up for decision on the basis of records available.

5.1 The Government has carefully examined the matter. It is observed that the Commissioner (Appeals) has permitted the redemption of seized gold articles by holding that the said articles were not 'prohibited goods'. The Government observes that the original authority has, in para 10 and 11 of the Order-in-Original dated 26.03.2018, 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 [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."* 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 incorrect 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, as well as rate of duty applicable (in case of redemption) and penalty raised by the Applicant are also kept open for the Commissioner (Appeals) to examine afresh and decide de-novo.

6. In view of the above, the revision application is disposed of by way of remand to the Commissioner (Appeals) for decision afresh, as per directions above.


(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Sher khan,
R/o H. No. &50, Kutsera, Dhangad Patti, Muzaffar Nagar,
UP-251 001.

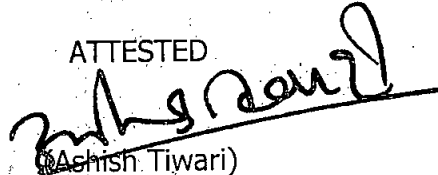
Order No. 211 /21-Cus dated 13-10-2021

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



(Ashish Tiwari)
Assistant Commissioner(RA)