

SPEED POST



F. Nos. 375/05/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. 212/21-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 Applications filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC (A) CUS/D-I/Airport/541/2018 dated 09.11.2018 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicants : Sh. Nadeem Ahmad, Muzaffar Nagar.

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

ORDER

A revision application no. 375/05/B/2019-RA dated 22.01.2019 has been filed by Sh. Nadeem Ahmad, Muzaffar Nagar (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC (A) CUS/D-I/Airport/541/2018 dated 09.11.2018 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has, vide impugned Order-in-Appeal, modified the Order-in-Original No. 81/AS/JC/2018 dated 28.02.2018 passed by the Joint Commissioner of Customs, IGI Airport, New Delhi, to the extent that gold bars, totally weighing 733.28 grams valued at Rs. 19,66,836/-, have been allowed to be redeemed on payment of redemption fine of Rs. 4,80,000/- to be cleared on payment of baggage rate of duty. The Commissioner (Appeals) has also reduced the penalty of Rs. 4,00,000/- which was imposed by the original authority on the Applicant to Rs. 3,00,000/-.

2. Briefly stated, the Applicant arrived at the IGI Airport, New Delhi, on 06.05.2017, from Dammam, Saudi Arabia. He was intercepted near the exit gate of arrival hall and on examination of his baggage trolley, 04 gold bars, collectively weighing 733.38 gms and valued at Rs. 19,66,836/-, were recovered, found attached beneath the trolley (just above the front wheel) with the help of white adhesive tape. The Applicant, in his statement, tendered under Section 108 of the Customs Act, 1962, stated that the gold did not belong to him and it was given to him by his brother who promised him to pay Rs. 40,000/- for importing the same into India; that he knew very well that import of gold into India is not allowed and he intentionally did not report on the red channel as he was directed by his brother not to do so. The said gold bars were confiscated absolutely under Section 111(d), 111(i), 111(j), 111(l) and 111(m) and 111(o) of the Customs Act, 1962, by the original authority vide the above

said Order-in-Original dated 28.02.2018. A penalty of Rs.4,00,000/- was also imposed on the Applicant under Section 112 and 114AA 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 and merit reduction especially when customs duty @36.05% has to be paid by the Applicant on the said gold.

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 prayed that redemption fine imposed by the Commissioner (Appeals) is much more than margin of profit. Hence, redemption fine and penalty may be reduced. Sh. Anil Kumar Meena, Superintendent, appeared for the Respondent department and supported the amount of redemption fine imposed.

5.1 The Government has carefully examined the matter. 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 observes that the original authority has, in para 3.3 and 3.4 of the Order-in-Original dated 28.02.2018, 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 has, in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Others [1971 AIR 293], 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"*. 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."* 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 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. Nadeem Ahmad,
S/o Sh. Mohammad Matloob
R/o Vill & PO- Baghonwali,
Wouth Patti, Muzaffar Nagar, UP.

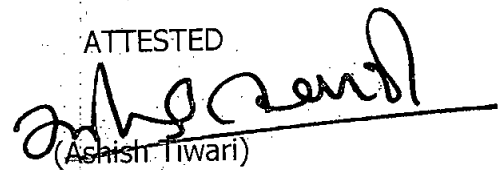
Order No. 212/21-Cus dated 13-10-2021

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)