

SPEED POST



F. No. 375/68/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...11/7/22

Order No. 217/22-Cus dated 11-07-2022 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/Air/210/2021-22 dated 18.08.2021 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Sh. Amit Sakhuja, New Delhi.

Respondent : The Commissioner of Customs (Airport), New Delhi.

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ORDER

A Revision Application No. 375/68/B/2021-RA dated 30.11.2021 has been filed by Sh. Amit Sakhuja, New Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/210/2021-22 dated 18.08.2021 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original passed by the Additional Commissioner of Customs, IGI Airport, New Delhi, bearing no. 165/Adj/2019 dated 30.05.2019, wherein, one white coated gold Kada weighing 101 gms, one hollow gold ring weighing 90 gms & one gold chain weighing 151 gms, collectively weighing 342 gms, valued at Rs. 10,48,514/-, recovered from Applicant were confiscated absolutely under Section 111 of the Customs Act, 1962. Penalty of Rs. 2,00,000/- was also imposed on the Applicant under Section 112 & 114AA of the Act, *ibid*.

2. Brief facts of the case are that, the Applicant arrived, on 11.02.2019, at IGI Airport, New Delhi, from Bangkok. He was intercepted by the Customs officers at the exit gate of the Arrival Hall after he had already crossed the Green Channel. During the personal search of the Applicant, one white coated gold Kada weighing 101 gms & one gold chain weighing 151 gms, both worn by the Applicant and one hollow gold ring weighing 90 gms concealed in the dial of his wrist watch, collectively weighing 342 gms, valued at Rs. 10,48,514/-, were recovered. In his statements dated 11.02.2019 & 13.03.2019, tendered under Section 108 of Customs Act, 1962, the Applicant stated that the gold belonged to him; that gold items were not declared

intentionally; that gold items were purchased from a China town market in Bangkok and he did conceal the gold in dial of watch and by coating it with colour to avoid detection by Customs and he had not declared the same at Red channel to evade Customs duty. The original authority, vide the aforesaid Order-in-Original dated 30.05.2019, confiscated absolutely the seized gold items under Section 111(d), 111(i), 111(j), 111(i), 111(m) & 111(o) of the Act, ibid and imposed a penalty of Rs. 2,00,000/- on the Applicant under Section 112 and 114AA. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The instant revision application has been filed, mainly, on the grounds that the gold was worn by the Applicant and there is no concealment; that the Applicant had no intention to smuggle the gold; that the Applicant works as a taxi & tour operator and earns his livelihood and purchased the gold from the money earned and saved by him; that the import of gold in baggage is not prohibited; that allegations of mis-declaration are not correct; that the gold may be allowed to be redeemed in terms of Section 125 of the Customs Act, 1962; and that token penalty may be imposed.

4. Personal hearing was fixed on 22.06.2022 and 08.07.2022. In the personal hearing held on 08.07.2022, in virtual mode, Ms. Kanika Goswami, Advocate, appeared for the Applicant and reiterated the contents of the revision application. No one appeared for the Respondent department nor has any request for adjournment been received. Hence, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed that gold Kada was while coated to avoid detection and one hollow gold ring was concealed in the dial of the wrist watch. Manner of concealment belies the contention that Applicant had no intention to smuggle the gold.

6. In terms of Section 123 of the Act, *ibid*, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. In the present case, the Applicant had failed to produce any evidence that the gold items recovered from him was not smuggled. The gold articles were attempted to be removed from the Customs Area in concealed manner and also were not declared by the Applicant to the Custom officers, as required under Section 77 of Customs Act, 1962. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*.

7.1 It is contended on behalf of the Applicant that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is in the teeth of law settled by a catena of judgments of Hon'ble Supreme Court. In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Apex Court 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*". 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. 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"*. 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."*

7.2 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-----."

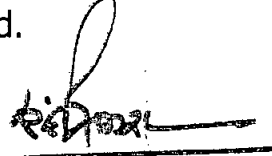
7.3 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

8. The original authority has denied the release of impugned goods 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 Order of the original authority does not suffer from any of these vices. Rather, the original authority has, after due application of mind, ordered absolute confiscation for the relevant and reasonable considerations, specifically brought out in para 3.14 of the Order-in-Original. Thus, the Commissioner (Appeals) has correctly refused to interfere in the matter. The case laws relied upon by the Applicant are not applicable, in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

9. In the facts and circumstances of the case, the penalty imposed by the original authority and upheld by the Commissioner (Appeals) is just and fair.

10. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Amit Sakhuja,
S/o Sh. Krishan Sakhuja,
R/o H-66, Jor Bagh Lane,
B. K. Dutt Colony, New Delhi-110003.

Order No. 2/7/22-Cus dated 11-07-2022

Copy to:

1. The Commissioner of Customs, IGI Airport, New Delhi.
2. The Commissioner of Customs (Appeals), NCH, New Delhi.
3. Ms. Kanika Goswami, WZ-258 A, Street No.4, Sri Nagar, Rani Bagh, Delhi-110034.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi