

SPEED POST

F. No. 375/01/B/2022-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. 11/17/22...

Order No. 218/22-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 Custom Act, 1962.

- Subject : Revision Application filed, under Section 129DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Air/3868/21-22 dated 01.11.2021, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi
- Applicant : Sh. Waseem Raja, Meerut, Uttar Pradesh.
- Respondent : Commissioner of Customs, IGI Airport, New Delhi.
- .....

**ORDER**

A Revision Application No. 375/01/B/2022-RA dated 03.01.2022 has been filed by Sh. Waseem Raja, Meerut, Uttar Pradesh (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/3868/21-22 dated 01.11.2021, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi. The Commissioner (Appeals) has upheld the order of the Joint Commissioner of Customs, IGI Airport, New Delhi, bearing No. 358/2020-21 dated 24.03.2021, wherein two gold bars, collectively weighing 233.5 grams and one gold piece weighing 36.90 grams, totally valued at Rs. 11,90,689/-, recovered from the possession of the Applicant, were confiscated absolutely under Section 111(d), 111(i), 111(j), 111(l) 111(m) and 111(o) of the Customs Act, 1962. Penalty of Rs. 2,40,000/- was imposed on the Applicant by the original authority, under Sections 112 of the Customs Act, 1962, which has also been maintained in appeal.

2. The brief facts of the case are that the Applicant arrived, on 16.01.2021, at IGI Airport, New Delhi, from Dubai and was intercepted near the exit gate after he had crossed the Customs Green Channel. Detailed examination of his baggage and personal search, resulted in the recovery of two gold bars, collectively weighing 233.5 grams and one gold piece weighing 36.90 grams, totally valued at Rs. 11,90,689/-. The Applicant, in his statement dated 16.01.2021, tendered under Section 108 of the Customs Act, 1962, admitted the recovery of said two gold bars and one cut piece of gold, from his possession. He stated that he was well aware of the fact that import of gold attracted Customs duty and he intentionally and deliberately did not declare the

subject gold with an intention to evade Customs duty; and that he admitted the act of omission and commission on his part and was ready to pay duty, fine, penalty etc.

3. The revision application is filed, mainly, on the grounds that the Applicant had the legal possession of the seized gold bars/ piece; that the gold was not concealed but was purchased by him for his personal use; that the Applicant had produced the invoice of the seized golds bars/ piece to the Customs Officer; and that the import of gold is not prohibited. Accordingly, it has been prayed that the gold may be allowed to be redeemed and the penalty imposed may be set aside or token penalty may be imposed.

4. A personal hearing, in virtual mode, was held on 08.07.2022. Ms Prabhjyot Kaur, Advocate, appeared on behalf of 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 the Applicant did not declare the gold brought by him as stipulated under Section 77 of Customs Act, 1962, to the customs authorities at the airport and instead he opted to walk through the Green Channel. The Applicant has, in his statement tendered under Section 108 *ibid*, admitted his acts of omission and commission. Further, the Applicant, vide application dated 05.02.2021, waived the issuance of show cause notice and

personal hearing, in the matter. As regard the contention of the Applicant that the statement dated 16.01.2021 was retracted, the Government observes that a confession made before a Customs officer is admissible as evidence and is binding upon the person who makes the confession [Ref: Surjeet Singh Chhabra vs. UOI {1997 (89) ELT 646 (SC)}].

6. Section 123 of Customs Act 1962 reads as follows:

*"123. Burden of proof in certain cases.*

*(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 and manufactures thereof watches, and any other class of goods which the Central Government may by notification in the Official Gazette, specify."*

Hence, 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. Admittedly no declaration regarding carriage of gold was made by the Applicant, as required under Section 77 of the Act *ibid*. Further, the Applicant had crossed the Green Channel when he was intercepted. Hence, the contention of the Applicant that he took out the gold and gave to the officers, is an afterthought. In fact, the Applicant did not even contest this position at the original stage and waived the SCN as well as PH. Further, the Applicant never produced the invoices, now sought to be placed on record, before the original authority, even though he had ample opportunity to do so. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*.

7.1 The Applicant has contended that import of gold is not prohibited. The Government observes that in the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Others* [1971 AIR 293], the Hon'ble Supreme 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*". The Joint Commissioner has, in paras 10.2 & 10.3 of the Order-in-Original dated 24.03.2021, 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 fulfilment 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 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."*

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, in respect of gold, as under:

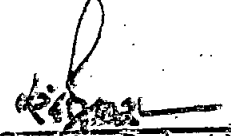
*"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----."*

7.3 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 ratio of the aforesaid judgments, it is held that the subject goods are 'prohibited goods' and, as such, the contentions to the contrary are incorrect.

8. The original authority has denied the release of offending goods on payment of redemption fine, under Section 125 of Customs Act, 1962. The Government observes that, in terms of Section 125 *ibid*, the option to release 'prohibited goods', on redemption fine, is discretionary {Ref. Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]}. In the case of M/s Raj Grow Impex LLP & Ors (*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; and has to be based on the relevant considerations*". Similarly, in the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344) ELT1154 (Mad.)}, the Hon'ble Madras High Court has, relying upon several judgments of the Apex Court, 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".*" In the present case, the original authority has refused to grant redemption in the background of attempted smuggling by concealment with intent to evade Customs Duty. Thus, the Order of the original authority, upheld by the Commissioner (Appeals), being a reasoned Order based on relevant considerations, does not merit interference.

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. Waseem Raja,  
H.No.534, Sarai Behleem,  
Meerut, Uttar Pradesh-250002.

Order No. 218/22-Cus dated 11-07-2022

Copy to:

1. The Commissioner of Customs (Appeals), New Customs House, New Delhi-110037;
2. The Commissioner of Customs, IGI Airport, New Delhi-110037.
3. Sh. D. S. Chadha, Advocate, 92 GF Block V, Eros Garden, Faridabad-121009.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)

(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