

SPEED POST



F.No. 375/25/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.. 31/12/20

Order No. 23/20-Cus dated 30-12-2020 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/ 82/2018 dated 26.03.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037

Applicant : Mr. Shihabudheen Kodokodan

Respondent : Commissioner of Customs (Airport & General), New Delhi

.....

**ORDER**

A Revision Application No. 375/25/B/2018-RA dated 26.03.2018 has been filed by Sh. Shihabudheen Kodokodan, (hereinafter referred to as the applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/82/2018 dated 12.03.2018 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. Commissioner (Appeals) has upheld the order of the Joint Commissioner of Customs, IGI Airport, Terminal-3, New Delhi bearing no. 40/JC/US/2016 dated 31.10.2016 wherein one belt buckle of silver color (made of gold), recovered during the personal search of the applicant, having 24 karat purity weighing 253.15 grams valued at Rs. 6,40,86/-, has been absolutely confiscated and free allowance has been denied to the applicant. The adjudicating authority has imposed a penalty of Rs.2,50,000/- 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 30.01.2014 at IGI Airport from Dubai and was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person and of his baggage one gold belt buckle having silver color was recovered from his possession. The gold article, weighing 253.15 grams, was appraised at Rs.6,40,860/- by the Jewellery Appraiser at IGI airport. The applicant in his statement, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of gold article.

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. Gold article imported by the applicant is bonafide as the gold was brought by him for his personal use. It is further contended that it is not a case of concealment and buckle was visible to naked eye. Imposition of Penalty under section 114 AA is not applicable as no incorrect declaration was made and only token penalty should be imposed under Section 112(a).

4. Personal hearing was held on 29.12.2020. Sh. S.S. Arora, Advocate appeared on behalf of the applicant. He reiterated the grounds of revision already stated in the revision application. Sh. Arora requested permission to file a written submission with updated case laws by 30.12.2020, which was granted. Sh. R.P. Bairwah, Superintendent, appeared on behalf of the department. He stated that the gold buckle was silver coated and, therefore, concealment is obvious. Applicant vide e-mail dated 30.12.2020 submitted their submissions and reiterated the grounds of revision already stated in their revision application.

5. On examination of the relevant case records, the Commissioner (Appeals)'s order and the Revision application, it is evident that the impugned gold item was 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 had not declared anything in Column 6 (Total value of

dutiable goods imported). Further, the applicant has admitted the fact of non-declaration in his statement tendered under Section 108 of Customs Act, 1962.

6. 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 observation of adjudicating authority and Commissioner (Appeals) that the burden of proof is on the PAX from whom the impugned goods are recovered is correct in terms of Section 123 of Customs Act, 1962.

7. The contention of the applicant that the gold buckle was clearly visible to Customs Officer, as the same was worn by him in his belt, is not tenable as the belt

buckle was having silver coating and as such no one with naked eye could have made out that the buckle is made of gold. It is obvious that the buckle was coated with silver color with the intent to camouflage so as to hoodwink the Customs Officers. This is clearly an act of concealment with the intent to smuggle. Hence, this contention of the applicant is not acceptable.

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 Joint Commissioner, in para 20, 20.1 & 20.2 of the O-I-O dated 30.10.2016, 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. 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 by concealment, for monetary gains, with intent to evade Customs Duty. In the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344)ELT1154 (Mad.)}, the Hon'ble Madras High Court, after extensive application of several judgments of the Apex 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". It is observed that the original authority has in the instant case after appropriate consideration passed a reasoned order refusing to allow redemption in the background of attempted smuggling by concealment and for monetary gains. Thus, applying the ratio of P. Sinnasamy (Supra), the discretion exercised by the original authority does not merit interference.

11. 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:

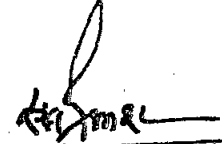
*'Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of 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.

12. Applicant has also prayed for only a token penalty to be imposed under Section 112(a). The Government observes that the penalty of Rs. 2,50,000/-

imposed under Section 112(a) and 114AA does not merit interference in the facts and circumstances of the case.

13. 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. Shihabudheen Kodokodan, 4418/7, Ansari road, Darya Gunj, New, Delhi-110007.
2. The Commissioner of Customs, IGI Airport Terminal-3, New Delhi-110037

Order No. 23/20-Cus dated 30-12-2020

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



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