

SPEED POST

F. No. 380/01/B/2022-RA
F. No. 375/03/B/2022-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: 27/07/22

Order No. 247248/22-Cus dated 27-07-2022 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 129 DD of the Customs Act 1962 against the Order-in-Appeal No. No.CC(A)Cus/D-I/Air/1614-1615/2021-22 dated 29.09.2021, passed by the Commissioner of Customs (Appeals), New Custom House, Near IGI Airport, New Delhi.
- Applicant : 1. Commissioner of Customs, IGI Airport, New Delhi
2. Mrs. Oguljeren Derchiyeva, Ashgabat, Turkmenistan.
- Respondent : 1. Mrs. Oguljeren Derchiyeva, Ashgabat, Turkmenistan.
2. Commissioner of Customs, IGI Airport, New Delhi.

ORDER

Revision Applications, bearing No. 380/01/B/2022-RA dated 05.01.2022 and No. 375/03/B/2022-RA dated 06.01.2022, have been filed by the Commissioner of Customs, IGI Airport, New Delhi, (hereinafter referred to as the Applicant-1) and Mrs. Oguljeren Derchiyeva, Ashgabat, Turkmenistan (hereinafter referred to as the Applicant-2), respectively, against the Order-in-Appeal No. CC(A)Cus/D-I/Air/1614-1615/2021-22 dated 29.09.2021, passed by the Commissioner of Customs (Appeals), New Custom House, New Delhi. Commissioner (Appeals), vide the impugned Order-in-Appeal, has rejected the appeals filed, by the Department (Applicant-1 herein) and that filed by the Applicant-2 and has upheld the Order of the Joint Commissioner of Customs, IGI Airport, Terminal-3, New Delhi, bearing no. 314/Adj/JC/2020 dated 31.12.2020. The original authority has ordered confiscation of 2425 grams of gold, valued at Rs. 48,52,4741/-, under Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962 and imposed penalty of Rs. 8,00,000/- under Section 112(a), 112(b) and 114AA of the Act, ibid on the Applicant. Demand of Customs Duty @ 38.5%, amounting to Rs. 1,57,405/-, was also confirmed under Section 28 of the Customs Act, 1962 in respect of the gold, totally weighing 150 gms, valued at Rs. 4,08,844/- smuggled by the Applicant-2 during her past visit along with applicable interest under 28AA of the Customs Act, 1962 and further imposed penalty of Rs. 1,57,405/- on the Applicant-2 under Section 114A of the Customs Act, 1962. The original authority, however, allowed re-export of the seized gold on payment of redemption fine of Rs. 8,00,000/-.

2. Brief facts of the case are that the Applicant-2 arrived, on 01.05.2019, at IGI Airport from Turkmenistan and was intercepted after she had crossed the Customs Green Channel. After search of her person and of her baggage 06 pieces of gold bars weighing 600 gms and 18 gold chain, 01 gold ring, 06 gold bracelet & 01 gold pendent (totally weighing 1825 gms) i.e., gold and gold articles totally weighing 2425 gms valued at Rs. 48,52,474/-, were recovered from her possession. The recovered gold items were seized and confiscated under Section 111 of the Customs Act, 1962. The Applicant-2 in her statements dated 01.05.2019 and 05.05.2019, recorded under Section 108 of the Customs Act, 1962, admitted that the subject gold items belonged to her; that she had come to India for her medical treatment and the gold items were purchased by her from Ashgabat, Turkmenistan; that she had brought the same to sell in market at Delhi for making some profit and she would have used that money for her medical treatment. She further stated that she had brought 150 gms of gold chain and cosmetics in her last visit to India and earned for her medical treatment. She agreed that she had violated the law & rules of Customs.

3.1 The revision application has been filed by Applicant-1, mainly, on the ground that the Applicant-2 had attempted to smuggle the gold items with the intent to evade payment of duty; that as she had not declared the same to the customs authorities on her arrival at IGI Airport, therefore, the import of gold by the Applicant -2 is not bonafide as the Applicant -2 had not made a true declaration. Accordingly, it has been prayed that the order of redemption of goods for re-export cannot be sustained. A written Reply dated 04.06.2022 has been filed by the Applicant-2.

3.2 The Applicant-2 has filed the revision application, mainly, on the grounds that she is the owner of the gold; that the gold imported is bonafide; that the import of the gold is not prohibited; that, accordingly, to allow re-export on payment of nominal fine and penalty under Section 125 of the Customs Act, 1962; and to set aside the Customs duty demanded under Section 28 and personal penalty under Section 114A.

4. Personal hearing was held on 25.07.2021. Sh. S.S. Arora, Advocate, appeared for the Applicant-2 and submitted that the RF imposed is high and may be reduced. In respect of the RA filed by the department, Sh. Arora submitted that before the Commissioner (Appeals) the department had contested the re-export on the basis that the gold was in commercial quantity and purchase bills were not produced whereas at this stage Section 80 has also been pleaded. The option has been given under Section 80 read with Section 125. Sh. Mahender Singh, Superintendent appeared for the department and reiterated the contents of the RA filed by the department. He highlighted that there is no provision under Section 125 to permit re-export, which is permissible only under Section 80. The conditions precedent to allowing re-export under Section 80 have not been fulfilled.

5. The Government has examined the matter carefully. It is observed that the issue of liability of the seized gold articles to confiscation under Section 111 stands concluded with the Order of Commissioner (Appeals). The question that remains for consideration is whether the seized goods could have been allowed to be redeemed in lieu of confiscation for re-export on payment of fine under Section 125 of the Customs Act, 1962, in the absence of any such provision allowing re-export under Section 125.

6.1 The original adjudicating authority, consequent upon confiscation of subject goods under provisions of Section 111 of Customs Act, 1962, has allowed the redemption of the said gold/ gold articles under Section 125 of Act, *ibid*, for re-export on payment of fine. The Government observes that in the case of baggage, a specific provision has been made, under Section 80 of the Act, *ibid*, which governs the re-export of goods contained in the baggage of any passenger, which are either dutiable or the import of which is prohibited and further in respect of which a true declaration has been made under Section 77 on the request of the passenger. The goods so detained may be returned to the passenger at the time of his leaving India or to any other authorised person or through cargo consigned in the name of such passenger. There is no specific provision under Section 125 *ibid* to permit re-export of goods contained in baggage. It is trite that a specific law prevails over the general law. Therefore, it was not open to the original authority to permit redemption under Section 125 by way of re-export, without the provisions of specific law i.e., Section 80 having been complied with.

6.2 In the case of Commissioner of Customs (Prev), Lucknow vs. Deepak Bajaj {2019(365)ELT695(All.)}, the respondent Deepak Bajaj, a holder of British passport, was intercepted while entering India through Nepal and 4320 gms of gold was recovered from him. In the second appeal, the CESTAT allowed the gold to be re-exported. However, the Hon'ble Allahabad High Court set aside the order of CESTAT and held that re-export can be allowed under Section 80 only if a declaration has been made under Section 77. In the present case, such a declaration has not been made and, thus, the requirements for re-export are not satisfied.

6.3 It is also observed that both the lower authorities have held the offending goods to be prohibited goods. As per Section 125 of the Customs Act, 1962, the option to grant redemption, in respect of prohibited goods, is discretionary. [Réf. 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 LLP {2021(377)ELT145(SC), the Hon'ble Supreme Court has held that the exercise of discretion "*has to be guided by law, has to be according to rules of reasons and justice, and has to be based on relevant consideration.*" In the present case, the reason recorded by the original authority to allow redemption is that "The goods are normal trade items and are imported in regular course of international trade though their import is subject to certain conditions if by way of normal cargo. In the instant case, the same has been brought by the Noticee. Their release shall not jeopardize any parameter detailed for prohibition." Thus, it would appear that the original authority despite being cognizant of the fact that the gold has been brought in baggage has chosen to equate it to normal trade in cargo mode. Further, in para 8.8 of his order, the original authority has brought out several contraventions due to which the subject goods have to be treated as prohibited goods but subsequently proceeded to hold that their release shall not jeopardize any parameter detailed for prohibition without specifying any reasons for arriving at this conclusion. Hence, the Government finds that the order of the original authority, is not supported by rules of reason and is, in fact, self-contradictory.

6.4 In view of the above, the order of redemption for re-export cannot be upheld and is set aside.

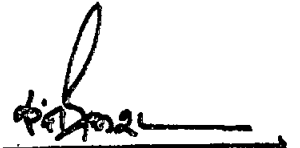
7.1 It is also contended by the Appliant-2 that the customs duty has been demanded under Section 28 of the Customs Act, 1962 for the goods allegedly brought by her during her past visit solely on the basis of her statement. It is contended that the Applicant is a Turkmenistan national and only knows Turkmenistan language whereas at the time of investigation a Russian interpreter, who is not a government notified interpreter. The Respondent department has not contradicted these averments. The Government observes that in a similar case of Mrs. Sarygul Matiyeva, Turkmenistan, the Government had, vide GOI Order No. 145/2021-Cus dated 04.08.2021, taken the following view:

"6. *The Government has carefully examined the matter. The smuggling of 660 gms of gold ornaments valued at Rs. 12,41,576/-, which were seized from the Applicant, is not denied. Therefore, the only issue in dispute is the allegation that the Applicant had in the past also, on four occasions, smuggled gold, totally weighing 1450 gms and valued at Rs. 28,93,156/-. It is observed that this allegation is based upon the statement by the Applicant before the Customs Officers. It is also on record that this statement was recorded with the help of an interpreter of Russian language. It is the contention of the Applicant that this statement is incorrect and that she does not understand any other language other than Turkmen. The Government observes that it is an admitted position that the interpreter used by the department was not an official interpreter engaged from any official recognized agency. In these peculiar facts and circumstances, the Government finds that fastening a serious*

liability like smuggling of 1450 gms of gold solely on the basis of such statements, without any corroborative evidence whatsoever, is not sustainable. Accordingly, the demand of Customs duty amounting to Rs. 11,13,865/- along with applicable interest and imposition of penalty under Section 114A by the original authority, as upheld by the Commissioner 9Appeals), is set aside."

7.2 In the present case, also, similar contentions have been raised which remain undisputed. Therefore, Government holds that the demand of Customs duty amounting to Rs. 1,57,405/- and imposition of equal penalty under Section 114A cannot be sustained.

8. In view of the above, Revision Application No. 380/01/B/2022-RA is allowed. The Revision Application No. 375/03/B/2022-RA is partly allowed by way of setting aside the demand of duty of Rs. 1,57,405/- and the imposition of equal amount of penalty under Section 114A. The impugned OIA is modified accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. The Commissioner of Customs,
IGI Airport Terminal-3,
New Delhi-110037.
2. Mrs. Oguljeren Derchiyeva,
D/o Sh. Aisher, C/o Maxblis White House,
Tower-G, Flat-405, Sector-75,
Noida-201304 (UP)

Order No. 247-248 /21-Cus dated 27-07 2021

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, New Delhi-110037.
2. Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi-110037.
3. Sh. S.S. Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi 110029
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