

**SPEED POST**



F. No. 373/38/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 27/1/23

Order No. 25 /23-Cus dated 27.01.2023 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. 925/2017 dated 23.10.2017, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Ms. Hajira Abdulla, Kasaragod

Respondent : Commissioner of Customs, Mangaluru.

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**ORDER**

A Revision Application, bearing No. 373/38/B/2018-RA dated 06.02.2018, has been filed by Ms. Hajira Abdulla, Kasaragod (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 925/2017 dated 23.10.2017, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has upheld the Order-in-Original of the Additional Commissioner of Customs, Mangaluru, bearing no. 01/2017 ADC dated 30.01.2017. Vide the aforementioned Order-in-Original, 02 chain shaped crude gold objects, 04 bangle shaped crude gold objects and 02 ring shaped crude gold objects, all of 24 carat purity, totally weighing 243.250 grams and collectively valued at Rs. 6,56,775/-, recovered from the Applicant herein, had been absolutely confiscated under Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. Besides, penalties of Rs. 2,00,000/- & Rs. 1,00,000/- were also imposed on the Applicant, under Sections 112(a) and 114AA, respectively, of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived at Mangaluru International Airport, from Dubai, on 01.02.2016, while she attempted to pass through the Customs Green Channel after handing over her Customs Declaration Form. Verification of her Customs Declaration Form revealed that she was not in possession of any dutiable/contraband goods either in her accompanied baggage or about her person. Upon enquiry also, she stated that she was not in possession of any dutiable/contraband goods. After being subjected to personal search, 02 chain shaped crude gold objects were found secreted inside the black coloured socks worn by the Applicant, 04 bangle shaped crude gold objects were found concealed in the folded sleeves of the Kurta worn by her and 02 ring shaped crude gold objects were found worn by the Applicant in her fingers. The Jewellery Valuer certified the purity, weight and value of the gold items as mentioned above. The Applicant was not in possession of any documents evidencing the purchase of the aforesaid 08 numbers of gold objects. The Applicant, in her statement dated 01.02.2016 & 03.02.2016, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that she went to Dubai on Tourist Visa for the first time on 04.01.2016 and from there to Sharjah along with her younger son to stay with her husband for few days; that since her husband was incurring loss in his perfume

business, they decided to sell the perfume shop and the shop license to one of their relatives Nawas; that from the amount so collected by selling the shop and shop license they repaid certain amount of loan and with remaining amount decided to buy some gold, to carry the same to India to sell and make some profit; that one of her friends advised her that gold can be concealed in person and taken to India so that the payment of Customs duty can be avoided; that since carrying gold in the form of biscuits is risky, with the help of one of their friend in Sharjah they managed to arrange gold in the form of crude ornaments i.e. two anklet chains, four bangles and two finger rings totally weighing 243.25 grams; that as they were badly in need of money she thought of bringing the same to India by concealment in clothes worn by her, on her return journey to India, which could fetch some money; that accordingly she carried the said gold ornaments by way of concealment in her person and proceeded to Mangaluru.

3. The revision application has been filed, mainly, on the grounds that the impugned order is opposed to law, facts and circumstances of the case; that gold is not prohibited goods; that absolute confiscation is not warranted in this case; and that the gold ornaments belonged to the Applicant. Accordingly, it has been prayed to set aside the order of absolute confiscation and imposition of penalty.

4. Personal hearing was fixed on 26.12.2022, 09.01.2023 and 25.01.2023. In the hearing held on 25.01.2023, in virtual mode, Sh. K.P.A. Shukoor, Advocate appeared for the Applicant and reiterated the contents of RA. He highlighted that the Applicant is not a repeat offender and there was no concealment. Hence, a lenient view may be taken. Sh. Mithosh Raghavan, DC appeared for the department and supported the orders of authorities below.

5. The Government has carefully examined the matter. It is observed that the Applicant was intercepted while she attempted to pass through the Customs Green Channel after handing over her Customs Declaration Form. The Applicant admitted the recovery of gold items from her and that she intended to clear the gold by way of concealment for monetary benefit. She made NIL declaration in her Customs Declaration Card. Nothing has been brought on record that the gold items belonged to her. Further, gold items are in

crude unfinished form and as such these cannot be considered to be jewellery/ornaments of personal use.

6. As per Section 123 of Customs Act 1962, 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. The Applicant did not declare the gold items as stipulated under Section 77 of the Act, *ibid*. Further, the Applicant was intercepted while she attempted to pass through the Green Channel after handing over her Customs Declaration Form. No document evidencing ownership and licit purchase have also been placed on record. The gold items were concealed in socks and under folded sleeves. Further, these are in crude form. Hence, the intention to smuggle is manifest. The Applicant has, thus, failed to discharge the burden placed on her, in terms of Section 123, *ibid*. Keeping in view the facts of the case and as the Applicant has failed to discharge the onus placed on her in terms of Section 123, the Government holds that the lower authorities have correctly held the goods to be liable to confiscation under Section 111 of the Act, *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, specifically in respect of gold, held 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-----."*

The judgment in Malabar Diamond Gallery (supra) has been followed by the Hon'ble Madras High Court, in the case of Commissioner of Customs (Air), Chennai-I vs. P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}.

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

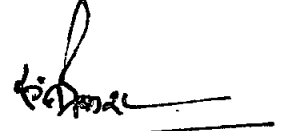
8. The original authority has denied the release of offending goods on redemption fine under Section 125 of Customs Act, 1962. In terms of Section 125 of the Customs Act, 1962, the option to release 'prohibited goods', on redemption fine, is discretionary, as held by the Hon'ble Supreme Court in the 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 P. Sinnasamy (supra), the Hon'ble Madras High Court has held that *"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 original authority has

for relevant and reasonable considerations, recorded in paras 37 & 38 of OIO, ordered for absolute confiscation. Hence, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

9. The case laws relied upon by the Applicant, in support of her various contentions, are not applicable in view of the dictum of Hon'ble Apex Court and Hon'ble High Courts as above.

10. In the facts and circumstances of the case, the penalty imposed on the Applicant herein, under Section 112 ibid is reduced to Rs. 1,00,000/- and that under Section 114AA ibid is reduced to Rs. 50,000/-.

11. The revision application is rejected, except to the extent of reduction in penalty as in para 10 above.



(Sandeep Prakash)

Additional Secretary to the Government of India

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Order No. 25 /23-Cus dated 27.01.2023

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. The Commissioner of Customs, New Custom House, Panambur, Mangalore-575010.
3. Sh. K.P.A Shukoor, Advocate, United Law Chambers, 2<sup>nd</sup> Floor, Krishnaprasad Building, K.S. Rao Road, Mangaluru-575001.
4. PS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.



ATTESTED

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