

SPEED POST



F. No. 375/09/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...05/08/22.....

Order No. 258/22-Cus dated 05-08-2022 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/3900/2021-22 dated 07.12.2021 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Sh. Ajay Kumar, Patiala, Punjab.

Respondent : The Commissioner of Customs, IGI Airport, New Delhi.

ORDER

A Revision Application No. 375/09/B/2022-RA dated 09.03.2022 has been filed by Sh. Ajay Kumar, Patiala, Punjab (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/3900/2021-22 dated 07.12.2021, 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. 200/Adj./2018 dated 26.04.2018.

2. Brief facts of the case are that the Applicant arrived, on 28.08.2017, at IGI Airport, New Delhi, from Bangkok. He was intercepted at exit gate after he had already crossed the customs green channel and diverted for detailed examination. During personal search, two cut pieces of gold bar, concealed in the shoes worn by the Applicant, collectively weighing 756 grams, valued at Rs. 20,68,931/-, were recovered from the Applicant. In his statements dated 28.08.2017, 05.09.2017 and 07.10.2017, tendered under Section 108 of the Customs Act, 1962, the Applicant stated that he had purchased the recovered gold pieces from Bangkok and had borrowed the money from his friend who owned fleet of Taxi in Bangkok; that he had brought the said two gold pieces to sell in open market in India to get profit; that he knew that to maximize the profit, he had to evade Customs duty; that he did not report at red channel and tried to clear the gold without paying Customs duty; and that the recovered gold pieces were concealed in his white colour Adidas Shoes i.e., one cut piece of gold in each shoe. The original authority, vide the aforesaid Order-in-Original dated 26.04.2018, confiscated the gold absolutely

under Section 111(d), 111(i), 111(j), 111(l), 111(m) and 111(o) of the Customs Act, 1962. Penalty of Rs. 4,14,000/- was also imposed on the Applicant under Section 112 & 114AA of the Act, *ibid*. 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 not found to be concealed; that the gold was purchased from his personal savings and the purchase invoice was handed over by him at the time of his detention; that the import of gold is not prohibited; that redemption may be allowed in terms of Section 125 of the Customs Act, 1962 and that, the penalty be set-aside or token penalty be imposed.

4. Personal hearing, in virtual mode, was held on 02.08.2022. Ms. Prabhjyoti Kaur, Advocate, appeared for the Applicant and requested that the Written Submissions emailed on 01.08.2022 may be taken on record. She reiterated the contents of the revision application and the Written Submissions dated 01.08.2022. Sh. Mahender Singh, Supdt. appeared for the Respondent department and supported the Orders of the lower authorities. He highlighted that it is a case of ingenious concealment in shoes.

5. The Government has carefully examined the matter. It is observed that cut pieces of gold were concealed in the shoes worn by the Applicant, to avoid detection by the Customs authorities at airport. To the contrary, in the revision application, it has been contended that there was no concealment and recovered gold pieces were carried by the Applicant in the pocket of the trouser worn by him. Further, in the Written Submission dated 01.08.2022, it

is submitted that "even if it is assumed that, gold was kept in shoes worn by the Applicant but, it does not amount to concealment in view of Contents of Chapter 17 (CONCEALMENT) of Baggage Rules enclosed as Attachment, wherein it states that goods kept in footwear amount to concealment only if there are hollow soles or heels or kept in inner lining; but in the instant case, there are no allegation that, gold was kept in inner lining or there are hollow soles or heels, thereby the allegations that the gold was concealed by the Applicant is incorrect." The Government finds that the first contention that the gold was not concealed in shoes but was kept in trouser pockets is incorrect as the recovery from shoes was made in the presence of independent witnesses under Panchanama. Further, this fact is also admitted by the Applicant in his statements. The alternate contention that the gold was kept in shoes and not in the inner lining/soles and, hence, it does not amount to concealment in view of "Chapter 17 (CONCEALMENT) of Baggage Rules", is to say the least misleading and entirely misconceived. At the outset, there is no Chapter 17 in the applicable Baggage Rules, i.e. Baggage Rules, 2016. Subsequent to the personal hearing, some papers have been received by email, which indicate that reference made to Chapter 17 is actually to a publication titled "Baggage Rules of India", 3rd Updated Edition, 2013. The Government observes that the Chapter 17 of this publication commences with the following "Modus operandi about concealment is briefly given below:" and thereafter in respect of Footwear, the concealment, method is stated as in "hollow soles or heels; and inner linings removed." Thus it is apparent that the authors have in this publication attempted to illustrate the modus operandi adopted for concealment. By no stretch of imagination, this attempt of authors can be used to contend that every other modus operandi adopted, i.e., the modus-operandi other than those finding

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1 mention in this publication, does not amount to concealment. Human ingenuity knows no bounds. Every other day, people find new ways to conceal goods etc. ^{for} smuggling. In such a situation, the contention of the Applicant, which is sought to be supported by a 09 year old publication, cannot be countenanced.

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, though the Applicant produced the purchase invoice after he was intercepted, however, he admitted the attempt was to smuggle the offending gold to evade Customs duty with the intent to maximize his profit. Manner of concealment further establishes that it was a premeditated attempt at smuggling. Thus, it is evident that the gold articles were attempted to be removed from the Customs Area in concealed manner and, admittedly, 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, 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 subject goods are not 'prohibited goods', cannot be accepted.

9. The case laws relied upon by the Applicant, in support of his various contentions, are not applicable in view of the law laid down by the Hon'ble Supreme Court and Hon'ble High Courts, as above.

10. 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.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

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Order No. 258/22-Cus dated 05-08-2022

Copy to:

1. The Commissioner of Customs, T-3, IGI Airport, New Delhi-110037.
2. The Commissioner of Customs (Appeals), NCH, New Delhi-110037.
3. Ms. Prabhjyoti Kaur, Advocate, G-16, 2nd Floor, Lajpat Nagar-I, New Delhi - 110 024.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED

Gohait
05/8/22

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