

SPEED POST



F. No. 372/07/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. 24/8/22

Order No. 284/22-Cus dated 24-08-2022 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 Applications under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No. KOL/CUS/Airport/AKR/130/2022 dated 04.03.2022 passed by the Commissioner of Customs (Appeals), Kolkata.

Applicant : Sh. Harjit Singh, Ludhiana.

Respondent : Commissioner of Customs (Airport), Kolkata.

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ORDER

A Revision Application No. 372/07/B/2022-RA dated 17.05.2022 has been filed by Sh. Harjit Singh, Ludhiana (hereinafter referred to as the Applicant) against the Order-in-Appeal No. KOL/CUS/Airport/AKR/130/2022 dated 04.03.2022, passed by the Commissioner of Customs (Appeals), Kolkata. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original passed by the Additional Commissioner of Customs (Airport), Kolkata, bearing no. 144/2020/ADC dated 22.12.2020, wherein three pieces of commercial gold bangles of foreign origin, collectively weighing 531.200 gms, valued at Rs.17,95,456/-, recovered from Applicant were confiscated absolutely under Section 111(d) and 111(i) of the Customs Act, 1962. Penalty of Rs. 4,50,000/- was also imposed on the Applicant under Section 112 (a) & 112(b) of the Act, *ibid*.

2. Brief facts of the case are that, the Applicant arrived, on 25.02.2019, at NSCBI Airport, Kolkata, from Kuala Lumpur. He was intercepted by the Customs officers when passing through the Green Channel of NSCBI Airport, Kolkata. The Applicant was asked specifically whether he was carrying any contraband or gold or gold items with him or in his baggage to which he replied in negative. During the personal search of the Applicant, three pieces of gold bangles, one of the bangles was worn by him on his right hand covered under his full sleeve shirt and the other two were worn on both of his legs (one on each leg) covered with socks, collectively weighing 531.200 gms, valued at Rs. 17,95,456/-, were recovered. The Applicant could not produce any licit document in support of possession acquisition or legal importation of the recovered gold. In his statement dated 26.02.2019, tendered under Section 108 of Customs Act, 1962, the Applicant stated that he had purchased the gold bangles on 24.02.2019 in Malaysia for 90000

Ringgit; that he received money from his job in Malaysia in cash and not through banking channels; that he concealed the gold bangles for safety purpose and to protect them from being stolen on his way back to Ludhiana; that he would have taken the gold bangles to his home and would have sold them later for earning a good profit; that he was unaware about Customs laws and did such act for the first time. The original authority, vide the aforesaid Order-in-Original dated 22.12.2020, confiscated absolutely the seized gold items under Section 111(d) & 111(i) of the Act, ibid and imposed a penalty of Rs. 4,50,000/- on the Applicant under Section 112 (a) and 112(b). 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 allegation of the smuggling of gold bangles (Kadas) and non-declaration thereof before the Customs Officer on arrival has not been corroborated by any independent evidence; that the cross-examination of search witnesses has been denied; that Indian residents are allowed clearance free of duty articles in bona fide baggage upto value of Rs. 50,000/-; that gold Kadas were for Applicant's personal/ family use and not in commercial quantity; that no chance was given to the Applicant to make a declaration under Section 77 of the Customs Act, 1962; that grounds of appeal have not been considered by the Appellate Authority; that the Applicant was working as a labour/construction contractor in Malaysia over a period of time; that the import of gold in baggage is not prohibited; that allegations of mis-declaration are not correct; that the gold may be allowed to be redeemed in terms of Section 125 of the Customs Act, 1962; and that the Applicant be absolved from levy of penalty.

4. Personal hearing was fixed on 18.07.2022, 29.07.2022 and 22.08.2022. In the personal hearing held on 22.08.2022, in virtual mode, Sh. S.S. Arora, Advocate, appeared for the Applicant and reiterated the contents of the revision application. He highlighted that:

- (i) The Applicant was intercepted before crossing the Customs barrier. Hence the seized goods are not smuggled goods.
- (ii) As held by the Hon'ble Delhi HC in 2011(264)(ELT)182 (Del), AIU officers are not proper officers for seeking the declaration from a pax.
- (iii) The seized goods are not prohibited goods. Hence, these should be released on payment of redemption fine, penalty & Duty.

Sh. D.K. Ramuka, Superintendent appeared for the Respondent department and stated that the Applicant was intercepted after he had crossed the Green Channel. He supported the orders of lower authorities.

5. The Government has carefully examined the matter. As per the opening para of the order of the original authority, the Applicant was intercepted while passing through the green channel. It is not clear whether the Applicant had crossed the green channel as contended on behalf of the department in the personal hearing. The role played by the AIU officers also needs to be examined with reference to the original documents. Thus, it is not possible to take a view in respect of points (i) & (ii) raised on behalf of the Applicant during personal hearing.

6.1 As regards the contention at point (iii) of para 4, i.e., the import of gold is not 'prohibited', 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."*

6.2 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, specifically 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----"

6.3 In view of the above, this contention of the Applicant cannot be accepted.

7. In view of the discussions in para 5 above, it would be in the interest of justice to remand the matter to the original authority for decision afresh. All issues are kept open for decision afresh, except the issue of gold ~~of~~ not being a prohibited item which is answered against the Applicant herein in the preceding paras 6.1-6.3. 437

8. In view of the above, the revision application is allowed by way of remand to the original authority, with directions as above.


(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Harjit Singh,
S/o Sh. Jaswant Singh,
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Order No. 284/22-Cus dated 24-08-2022

Copy to:

1. The Commissioner of Customs (Appeals), 3rd floor, Custom House, 15/1, Strand Road, Kolkata-700001.
2. The Commissioner of Customs (Airport), NSCBI Airport, Kolkata-700052.
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



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