

SPEED POST



**F. No. 375/67/B/2019-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... 17/12/21

Order No. 291/21-Cus dated 17-12-2021 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. JNK-Excus-App-142-144/19-20 dated 18.07.2019 passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Jammu.

Applicant : Sh. Rajkumar, Jalandhar

Respondent : The Commissioner of Customs (Preventive), Amritsar.

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ORDER

A Revision Application No. 375/67/B/2019-RA dated 08.11.2019 has been filed by Sh. Rajkumar, Jalandhar (hereinafter referred to as '**the Applicant**') against the Order-in-Appeal No. JNK-Excus-App-142-144/19-20 dated 18.07.2019 passed by the Commissioner of CGST, Central Excise & Customs (Appeals), Jammu. The Commissioner (Appeals) has upheld the Order-in-Original No. 36/ASR/CUSTOM/PRV/2015 dated 24.08.2015, passed by the Additional Commissioner of Customs (Preventive), Amritsar, wherein two (02) Gold Bars of 1000 Grams each and three (03) Gold Bars of 116 Grams each, totally weighing 2348 Grams and valued at Rs. 57,33,534/-, smuggled by the Applicant and recovered from Sh. Paily K.J., Dog Handler of the Customs Department and posted at the Amritsar airport (herein after referred to as the '**Accomplice-1**') were confiscated absolutely, under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962. Penalty of Rs. 5,00,000/- & Rs. 25,000/- has also been imposed on the Applicant under Section 112(a) and 114AA of the Customs Act, 1962, respectively.

2. Brief facts of the case are that the Applicant arrived, on 11.06.2014, at Sri Guru Ram Dass Ji International Airport, Rajasansi, Amritsar from Doha by Flight No. QR-550. The Applicant, Accomplice-1 and one person who was Havaladar of Punjab Police (herein after referred to as the '**Accomplice-2**') were intercepted by the officers of Directorate of Revenue Intelligence (DRI), Amritsar in the parking area of the airport, while Accomplice-1 was handing over the smuggled gold to the Accomplice-2 in the presence of the Applicant. The smuggled gold was brought by the Applicant in black compact packet and handed over to the Accomplice-1 in the arrival hall of the international airport for onward delivery to the Accomplice-2 in the parking area of the airport. The DRI officers, after a scuffle, managed to apprehend the Applicant and the Accomplice-1, whereas, the Accomplice-2 managed to flee from the spot. On being asked, the Accomplice-1 disclosed that the black compact packet contained gold which was received by him from the Applicant in the arrival hall of the airport and he was going to hand it over to the Accomplice-2. The

Applicant confirmed the delivery of the smuggled black compact packet containing gold to the Accomplice-1 before customs clearance in baggage claim area (belt). The Applicant admitted that he was not the owner of the seized goods and brought the confiscated goods at the instance of Sh. Yogesh Raj Bagga (herein after referred to as the 'Handler'). The value of the recovered Gold was appraised as Rs. 57,33,534/-. The offending goods were confiscated absolutely by the original authority, vide Order-in-Original dated 24.08.2015. Penalty of Rs. 5 Lakh & Rs. 25,000/- was also imposed on the Applicant, under Sections 112(a) and 114AA of the Customs Act, 1962, respectively. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who vide the impugned Order-in-Appeal dated 18.07.2019, upheld the order of the original authority.

3. The instant revision application has been filed, mainly, on the grounds that the gold is not a prohibited item; that redemption be allowed on payment of concessional rate of duty under notification no. 12/2012-Cus dated 17.03.2021 (Sl. No. 321); and that penalty has been exorbitantly imposed.

4. The personal hearing, in virtual mode, was held on 17.12.2021. Sh. Sudhir Malhotra, Advocate attend the hearing. He submitted that while fact of recovery is not disputed, seized goods are not prohibited item. Hence these may be released on payment of fine and concessional rate of duty under notification No. 12/2012-Cus dated 17.03.2012. None appeared for the Respondent department. No request for adjournment has also been received. Therefore, the case is taken up for disposal.

5. The Government has carefully examined the matter. It is observed that neither the recovery of gold nor its carriage from abroad by the Applicant is disputed. It is also not disputed that the Applicant did not declare the gold brought by him, as stipulated under Section 77 of Customs Act, 1962, to the customs authorities at the airport.

6. The Applicant has contended that he is an eligible passenger in terms of Notification No. 12/2012- customs dated 17.03.2012. A plain reading of Notification no. 12/ 2012- customs dated 17.03.2012 makes it clear that a passenger returning to India after six months can bring one kg of gold on payment of concessional rate of customs duty subject to condition 35 of the said notification, which, inter-alia, requires the eligible passenger to file a declaration before the proper officer of customs at the time of arrival in India. In the instant case, such a declaration was not made in respect of the gold bars, with a claim for exemption, and instead a conscious attempt has been made to smuggle by not declaring the same. Thus, the Applicant does not fulfil the condition no. 35 of Notification no. 12/ 2012- Customs dated 17.03.2012. As such, the Government holds that the Applicant is not eligible for the concessional rate of duty in terms of Notification no. 12/ 2012- customs dated 17.03.2012

7.1 The Applicant has contended that the import of gold is not 'prohibited' and has, accordingly, sought release of offending goods under Section 125 ibid. The Government observes that in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Others [1971 AIR 293], the Hon'ble Supreme 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.*" 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 its judgment dated 17.06.2021, 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 the present case, the conditions subject to which gold could have been legally imported have not been fulfilled. Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods'.

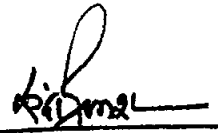
8. The original authority has denied the release of impugned goods on redemption fine under Section 125 of Customs Act, 1962. It is observed that, in terms of Section 125 of the Customs Act, 1962, the option to release seized 'prohibited goods', on redemption fine, is discretionary {Ref. Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]}.

In the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (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; and has to be based on the relevant considerations"*. Similarly, in the case of Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344) ELT1154 (Mad.)}, the Hon'ble Madras High Court has, relying upon several judgments of the Apex Court, 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"*. In the present case, the original authority has refused to grant redemption to the Applicant, in the background of smuggling, with intent to evade Customs Duty as also in the context of the economic security of the country. As such, following the

dictum of Raj Grow Impex (supra) and Sinnasamy (supra), the discretion exercised by the original authority could not have been interfered with.

9. The Government is also not persuaded to accept the contention of the Applicant that penalty imposed is excessive. To the contrary, the Government is of the opinion that in the background of clever manner in which offending goods were concealed and cleared from the Airport with the connivance of Accomplice-1 & 2 and the quantity/value of such goods, the authorities below have, in fact, been lenient in imposition of penalty.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. Rajkumar,
S/o Shri Prithvi Raj,
R/o WP-139, Basti Sheikh,
Jalandhar, Punjab

Order No. 291/21-Cus dated 17-12-2021

Copy to:

1. The Commissioner of Customs (Preventive), Customs House, Central Revenue Building, The mall, Amritsar, Punjab-143001.
2. The Commissioner of Customs (Appeals), CGST, Central Excise and Customs, OB-32, Rail Head Complex, Jammu.
3. Shri Sudhir Malhotra, Advocate, Chamber No. 103, C.K Daphtary Lawyer's Chambers, Supreme Court of India, Bhagwan Dass Road, New Delhi - 110001.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED


17/12/2021
GULSHAN CHHATIA
Superintendent