

SPEED POST



F. No. 375/16/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

Dated 15th November, 2022

To

Sh. Abdul Samad,
S/o Sh. Mohd. Samad,
R/o 53/6, Old Post Office,
R. No. 6, Savery Cross Road, Mumbai-400015.

Subject: Supply of complete set of attested copy of Order No. 295/22-Cus dated 20.09.2022 in Revision Application No. 375/16/B/2022-RA dated 25.03.2022 – reg.

With reference to the above-mentioned subject, it has come to notice that, inadvertently, an incorrect set of Order dated 20.09.2022 was endorsed to concerned person/ authorities. I am, therefore, directed to supply the certified copy of subject Order dated 20.09.2022 passed by the Revisionary Authority in RA No. 375/16/B/2022-RA dated 25.03.2022 for your records.

2. Please acknowledge the receipt of this letter.

Yours sincerely,

(Ravi Prakash),
OSD/ Deputy Commissioner

Copy along with enclosures to:

1. The Commissioner of Customs, IGI Airport, New Delhi.
2. The Commissioner of Customs (Appeals), NCH, New Delhi.
3. Sh. U.K. Sharma, Advocate, 289, Lawyers Chamber, Block-II, Delhi High Court, New Delhi-110003.

SPEED POST



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14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 20/9/22 *one*

Order No. 295/22-Cus dated 20-09-2022 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/3901/2021-22 dated 07.12.2021 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Sh. Abdul Samad, Mumbai.

Respondent : The Commissioner of Customs (Airport), New Delhi.

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ORDER

A Revision Application No. 375/16/B/2022-RA dated 25.03.2022 has been filed by Sh. Abdul Samad, Mumbai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/3901/2021-22 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. 119/ADC/2018 dated 28.03.2018 read with the corrigendum dated 15.05.2018 wherein, 05 packets containing 477 gold chains and 02 gold biscuits, concealed in white tissue papers wrapped in transparent cello tapes, collectively weighing 2716.5 gms, valued at Rs. 66,61,025/-, recovered from the Applicant were confiscated absolutely under Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. A corrigendum dated 15.05.2018 was issued confiscating absolutely, the sale proceeds from smuggling activities i.e., INR 19,090/- and UAE Dirhams 785. Penalty of Rs. 13,23,205/- was also imposed on the Applicant under Section 112 & 114AA of the Act, *ibid*.

2. Brief facts of the case are that the Applicant arrived, on 11.10.2013, at IGI Airport, New Delhi, from Dubai. He was intercepted by the DRI officers after he had already crossed the Green Channel. Upon being asked whether he had something to declare i.e., dutiable or prohibited goods, the Applicant denied. His Customs Declaration Slip too showed NIL declaration regarding any dutiable goods. During the search of hand bag of the Applicant, 05 packets containing 477 gold chains totally weighing 2516.5 gms & 2 gold biscuits each weighing 100 gms and, collectively weighing 2716.5 gms,

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valued at Rs. 66,61,025/-, were recovered which were found to be concealed in white tissue papers wrapped in transparent cello tape in such a manner that it could not be detected in normal course of examination. In his statement dated 12.10.2013, tendered under Section 108 of Customs Act, 1962, the Applicant stated that he was working in Dubai and was into business of Auto parts; that he came to India on monthly basis bringing TV etc. for sale which fetched him an extra income and also for past 1 year he carried approx. 20/25 tola of old gold Jewellery from Mumbai to Dubai but he never declared the same to Customs; that the recovered gold jewellery/ biscuits were purchased by him from Dubai on 11.10.2013 and intended to be sold in India; that he wrapped the recovered gold in tissue paper with tape with intention to escape detection: that he regularly brought dutiable goods into India from Dubai and did not declare the goods at the time of clearance from customs, in Customs Declaration Slip; and that the goods/ gold were brought by him with the intention to sell, i.e. for commercial purpose. During the proceedings, the Applicant failed to produce any evidence of legitimate money transfer to support licit purchase of gold from Dubai and it reflected that money earned from smuggling activities was used for purchase of gold and therefore, currency of Rs. 19,090/ and 785 Dirhams seized at the time of checking were also proceeds of smuggling. The original authority, vide the aforesaid Order-in-Original dated 28.03.2018, confiscated absolutely the gold jewellery/biscuits under Section 111(d), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962 and also the concealing material under Section 118 & 119 of the Customs Act, 1962. Vide corrigendum dated 15.05.2018, the seized Indian currency 19,090/- and UAE Dirhams 785 were also confiscated absolutely under Section 111(d), 111(i), 111(j), 111(l), 111(m) and 121 of the Customs Act, 1962 read with the provisions of the



Section 3(1)(c) of the Foreign Exchange Management (Export & Impost of Currency), Regulation, 2000. Penalty of Rs. 13,23,205/- was 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 OIA has been passed *ex-parte* without giving any opportunity of hearing; that the original authority did not supply the "reliable" information/ documents; that the original authority has failed to discuss that the Applicant herein had in the "personal hearing on 05.01.2015 also asked for relied upon information/ documents to submit reply to the show cause notice"; that the retraction dated 15.10.2013 has not been considered; that the corrigendum to original order has been issued by without any authority under Section 154 of the Act; that the appeal was fixed for hearing during the pandemic period when "all Courts/ Tribunals and even the Hon'ble Supreme Court were closed"; that the benefit of Section 125 has been denied to the Applicant; that the case may be remanded back to the Adjudicating Authority for proper adjudication by giving reasonable opportunity to the Applicant; and that the gold may be released on payment of duty and penalty.

4. Personal hearing was fixed on 22.07.2022, 16.08.2022 and 16.09.2022. In the personal hearing held on 16.08.2022, Sh. V. K. Sharma, Advocate & the Applicant, both appeared in person and requested for adjournment due to inadequacy of papers at their end. In the hearing held on 16.09.2022, Sh. V. K. Sharma, Advocate & the Applicant, both appeared in person. Sh. Sharma, Advocate reiterated the contents of the RA. He

highlighted that the principles of natural justice were not followed by the authorities below and, hence, the case may be remanded to the original authority. Sh. Rajeev Ranjan, Supdt. appeared for the department, in virtual mode, and submitted that show cause notice with all RUDs was served on the Applicant. Further the authorities below provided sufficient opportunities for written and oral submissions. He, accordingly, supported the orders of the lower authorities.

5.1 The Government has carefully examined the matter. It is observed that 05 packets containing 477 gold chains and 02 gold biscuits concealed in white tissue papers wrapped in transparent cello tapes, were recovered from hand baggage of the Applicant. The confiscated goods were concealed in such a manner that it could not be detected in normal course of examination. Manner of concealment belies the contention that Applicant had no intention to smuggle the gold articles and their clearance without payment of duty.

5.2 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, the Applicant has failed to produce any evidence that the gold articles recovered from him were not smuggled. The gold articles were attempted to be removed from the Customs Area in concealed manner and also were not declared by the Applicant to the Custom officers, as required under Section 77 of Customs Act, 1962. No document evidencing licit purchase and possession of the gold/ gold articles have been placed on record. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*.

6.1 It is contended that sufficient opportunities were not granted and requisite documents were not provided to the Applicant to defend his case. The Government finds that this contention of the Applicant is not borne out of records, for the following reasons:

- (i) The Applicant had, vide letter dated 07.05.2014 followed by letters dated 04.08.2014 & 12.12.2014, requested for certain documents and records such as CCTV footage. The department, vide letter dated 29.01.2015, informed the Applicant that all RUDs had been provided to him.
- (ii) There is no denial that the documents/ records asked for by the Applicant were not relied upon by the department while issuing the show cause notice. In other words, the Applicant was asking for documents/ records other than the RUDs. The Hon'ble Madras High Court has, in the case of S. Varadharajan vs. Commissioner of Customs, Tuticorin {2019 (370) ELT 194 (Mad.)}, held that "11. Right to seek certain documents from the department during the enquiry can be considered as vested right, if those documents are relied upon by the department in the show cause notice. ----- . At the same time, if the department has not relied on certain documents, which are sought to be furnished by the other side, certainly, there is no vested right on the person to seek such documents, in the domestic enquiry/ adjudicatory proceedings." Thus, it is clear that the Applicant has no vested right to seek the subject

documents/ records from the department and correspondingly the department had no obligation to furnish the same.

- (iii) The letter dated 07.05.2014, listing the documents/ records sought to be furnished by the Applicant, is conspicuously silent about relevance of the said documents/ records to the proceeding. The subsequent letters dated 04.08.2014 and 12.12.2014 are, in fact, more vague. It has also been contended in the RA that the Applicant had asked for these documents in the personal hearing on 05.01.2015. However, the Government observes that no personal hearing was held by the original authority on 05.01.2015. Thus, it is evident that the Applicant has not only been making this plea without any stated justification but has also resorted to falsehood to substantiate his contentions.
- (iv) The original authority had fixed the matter for hearing on 04 different dates. But the Applicant failed to appear.
- (v) The Commissioner (Appeals) fixed hearing on 22.07.2021, 11.08.2021 and 27.10.2021. However, the Applicant failed to appear before the Commissioner (Appeals) as well. This has been strangely justified on the grounds that being pandemic period the Courts were closed at the relevant time. There is no gain saying that during the pandemic period, except the lockdown period, all judicial/ quasi-judicial authorities were functioning and hearings were being held in virtual/ hybrid



mode. Thus, the subject contention of the Applicant is incorrect.

In view of the above, it is evident that there has not been any violation of the principles of natural justice by the lower authorities. In fact, it is the Applicant who did not join the proceedings on legally unsustainable and false grounds. The conduct of the Applicant, therefore, has been non-cooperative, dishonest, obfuscatory and dilatory in nature.

6.2 As regards, alleged non-consideration of retraction filed by the Applicant, it is observed that the same was duly answered and was taken into account by the original authority. The Government observes from the case records that the first statement of the Applicant herein was recorded under Section 108 of the Customs Act, 1962, on 12.10.2013, wherein the admission was made. He was, thereafter, arrested and released on bail at which stage the retraction was made. A rebuttal to his retraction application dated 15.10.2013 was sent by the department to the Applicant on 18.10.2013 and no further response was received from him. Further, the gold articles were seized in the presence of independent witnesses and the Applicant has not been able to make any case to challenge these proceedings. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction. In the present case, the Applicant has admitted the case of misdeclaration in his statement dated 12.10.2013 and the retraction was made on 15.10.2013 i.e., after his arrest and release on bail. Further, several revelations and admissions made could only have been in the personal knowledge of the Applicant. Therefore, there is no doubt that

the statement was voluntary. Further, in the case of Surjeet Singh Chhabra vs. UOI {1997 (89) ELT 646 (SC)}, the Apex Court has held that an admission made before a Customs officer can be relied upon even if it was subsequently retracted. In view of this, the present contention of the Applicant is not acceptable.

6.3 The Government observes that Corrigendum has been correctly issued by the original authority as per provision of Section 154 of the Customs Act, 1962. Section 154 is reproduced below:

Section 154. Correction of clerical errors, etc. -

Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be.

The liability to confiscation of the sale proceeds was specifically raised in the show cause notice. The original authority omitted to pass order in this respect in the OIO 28.03.2018 and corrected the error arising from this omission by issuing the Corrigendum dated 15.05.2018.

7.1 On merits, the Government observes that gold is not allowed to be imported in baggage, freely and it is permitted to be imported only subject to fulfillment of certain conditions. 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*". 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, 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-----."

7.3 In view of the above, there is no doubt that the subject offending goods are 'prohibited goods'.

8. The original authority has denied the release of offending goods on redemption fine under Section 125 of Customs Act, 1962. The Government observes that, 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 Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016(344)ELT1154 (Mad.)}, the Hon'ble Madras High Court has 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"."* 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 Order of the original authority does not suffer from any of these vices. Rather, the original authority has, after due application of mind, ordered absolute confiscation for the relevant and reasonable considerations, specifically brought out in para 20.2 & 21 of the Order-in-Original. Thus, the Commissioner (Appeals) has correctly refused to interfere in the matter. The

case laws relied upon by the Applicant are not applicable, in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

9. In the facts and circumstances of the case, the penalty imposed by the original authority, as upheld by the Commissioner (Appeals), is just and fair.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

ofc 20.09.2022

Sh. Abdul Samad,
S/o Sh. Mohd. Samad,
R/o 53/6, Old Post Office,
R. No. 6, Savery Cross Road,
Mumbai-400015.

Order No. 295/22-Cus dated 20-09-2022

Copy to:

1. The Commissioner of Customs, IGI Airport, New Delhi.
2. The Commissioner of Customs (Appeals), NCH, New Delhi.
3. Sh. U.K. Sharma, Advocate, 289, Lawyers Chamber, Block-II, Delhi High Court, New Delhi-110003.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED

SPEED POST



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(DEPARTMENT OF REVENUE)

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6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 20/9/22

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Incorrect copy
Not to be copied

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2. Brief facts of the case are that the Applicant arrived, on 11.10.2013, at IGI Airport, New Delhi, from Dubai. He was intercepted by the DRI officers after he had already crossed the Green Channel. Upon being asked whether he had something to declare i.e., dutiable or prohibited goods, the Applicant denied. His Customs Declaration Slip too showed NIL declaration regarding any dutiable goods. During the search of hand bag of the Applicant, 05 packets containing 477 gold chains totally weighing 2516.5 gms & 2 gold biscuits each weighing 100 gms and, collectively weighing 2716.5 gms,

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3. The instant revision application has been filed, mainly, on the grounds that OIA has been passed *ex-parte* without giving any opportunity of hearing; that the original authority did not supply the "reliable" information/ documents; that the original authority has failed to discuss that the Applicant herein had in the "personal hearing on 05.01.2015 also asked for relied upon information/ documents to submit reply to the show cause notice"; that the retraction dated 15.10.2013 has not been considered; that the corrigendum to original order has been issued by without any authority under Section 154 of the Act; that the appeal was fixed for hearing during the pandemic period when "all Courts/ Tribunals and even the Hon'ble Supreme Court were closed"; that the benefit of Section 125 has been denied to the Applicant; that the case may be remanded back to the Adjudicating Authority for proper adjudication by giving reasonable opportunity to the Applicant; and that the gold may be released on payment of duty and penalty.

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6.1 It is contended that sufficient opportunities were not granted and requisite documents were not provided to the Applicant to defend his case. The Government finds that this contention of the Applicant is not borne out of records, for the following reasons:

- (i) The Applicant had, vide letter dated 07.05.2014 followed by letters dated 04.08.2014 & 12.12.2014, requested for certain documents and records such as CCTV footage. The department, vide letter dated 29.01.2015, informed the Applicant that all RUDs had been provided to him.
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mode. Thus, the subject contention of the Applicant is incorrect.

In view of the above, it is evident that there has not been any violation of the principles of natural justice by the lower authorities. In fact, it is the Applicant who did not join the proceedings on legally unsustainable and false grounds. The conduct of the Applicant, therefore, has been non-cooperative, dishonest, obfuscatory and dilatory in nature.

6.2 As regards, alleged non-consideration of retraction filed by the Applicant, it is observed that the same was duly answered and was taken into account by the original authority. The Government observes from the case records that the first statement of the Applicant herein was recorded under Section 108 of the Customs Act, 1962, on 12.10.2013, wherein the admission was made. He was, thereafter, arrested and released on bail at which stage the retraction was made. A rebuttal to his retraction application dated 15.10.2013 was sent by the department to the Applicant on 18.10.2013 and no further response was received from him. Further, the gold articles were seized in the presence of independent witnesses and the Applicant has not been able to make any case to challenge these proceedings. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction. In the present case, the Applicant has admitted the case of misdeclaration in his statement dated 12.10.2013 and the retraction was made on 15.10.2013 i.e., after his arrest and release on bail. Further, several revelations and admissions made could only have been in the personal knowledge of the Applicant. Therefore, there is no doubt that

mode. Thus, the subject contention of the Applicant is incorrect.

In view of the above, it is evident that there has not been any violation of the principles of natural justice by the lower authorities. In fact, it is the Applicant who did not join the proceedings on legally unsustainable and false grounds. The conduct of the Applicant, therefore, has been non-cooperative, dishonest, obfuscatory and dilatory in nature.

6.2 As regards, alleged non-consideration of retraction filed by the Applicant, it is observed that the same was duly answered and was taken into account by the original authority. The Government observes from the case records that the first statement of the Applicant herein was recorded under Section 108 of the Customs Act, 1962, on 12.10.2013, wherein the admission was made. He was, thereafter, arrested and released on bail at which stage the retraction was made. A rebuttal to his retraction application dated 15.10.2013 was sent by the department to the Applicant on 18.10.2013 and no further response was received from him. Further, the gold articles were seized in the presence of independent witnesses and the Applicant has not been able to make any case to challenge these proceedings. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction. In the present case, the Applicant has admitted the case of misdeclaration in his statement dated 12.10.2013 and the retraction was made on 15.10.2013 i.e., after his arrest and release on bail. Further, several revelations and admissions made could only have been in the personal knowledge of the Applicant. Therefore, there is no doubt that

documents/ records from the department and correspondingly the department had no objection to furnish the same.

- (iii) The letter dated 07.05.2014, listing the documents/ records sought to be furnished by the Applicant, is conspicuously silent about relevance of the said documents/ records to the proceeding. The subsequent letters dated 04.08.2014 and 12.12.2014 are, in fact, more vague. It has also been contended in the RA that the Applicant had asked for these documents in the personal hearing on 05.01.2015. However, the Government observes that no personal hearing was held by the original authority on 05.01.2015. Thus, it is evident that the Applicant has not only been making this plea without any stated justification but has also resorted to falsehood to substantiate his contentions.
- (iv) The original authority had fixed the matter for hearing on 04 different dates. But the Applicant failed to appear.
- (v) The Commissioner (Appeals) fixed hearing on 22.07.2021, 11.08.2021 and 27.10.2021. However, the Applicant failed to appear before the Commissioner (Appeals) as well. This has been strangely justified on the grounds that being pandemic period the Courts were closed at the relevant time. There is no gain saying that during the pandemic period, except the lockdown period, all judicial/ quasi-judicial authorities were functioning and hearings were being held in virtual/ hybrid

the statement was voluntary. Further, in the case of Surjeet Singh Chhabra vs. UOI {1997 (89) ELT 646 (SC)}, the Apex Court has held that an admission made before a Customs officer can be relied upon even if it was subsequently retracted. In view of this, the present contention of the Applicant is not acceptable.

6.3 The Government observes that Corrigendum has been correctly issued by the original authority as per provision of Section 154 of the Customs Act, 1962. Section 154 is reproduced below:

Section 154. Correction of clerical errors, etc. -

Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be.

The liability to confiscation of the sale proceeds was specifically raised in the show cause notice. The original authority omitted to pass order in this respect in the OIO 28.03.2018 and corrected the error arising from this omission by issuing the Corrigendum dated 15.05.2018.

7.1 On merits, the Government observes that gold is not allowed to be imported in baggage, freely and it is permitted to be imported only subject to fulfillment of certain conditions. 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*". 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, 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-----."

7.3 In view of the above, there is no doubt that the subject offending goods are 'prohibited goods'.

case laws relied upon by the Applicant are not applicable, in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

9. In the facts and circumstances of the case, the penalty imposed by the original authority, as upheld by the Commissioner (Appeals), is just and fair.

10. 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. 295/22-Cus dated 20-09-2022

Copy to:

1. The Commissioner of Customs, IGI Airport, New Delhi.
2. The Commissioner of Customs (Appeals), NCH, New Delhi.
3. Sh. U.K. Sharma, Advocate, 289, Lawyers Chamber, Block-II, Delhi High Court, New Delhi-110003.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



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