

SPEED POST



F. No. 375/02/B/2020-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 28/01/22

Order No. 30/22-Cus dated 28-01-2022 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. 150(CRM)/CUS/JPR/2019 dated 11.09.2019, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur.

**Applicant** : Sh. Girdhar Singh, Jalore, Rajasthan.

**Respondent** : The Commissioner of Customs (Preventive), Jodhpur.

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**ORDER**

A Revision Application No. 375/02/B/2020-RA dated 02.01.2020, has been filed by Sh. Girdhar Singh, Jalore, Rajasthan (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 150(CRM)/CUS/JPR/2019 dated 11.09.2019, passed by the Commissioner (Appeals), Customs, Central Excise & CGST, Jaipur. The Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, LCS, Munabao, District Barmer, Rajasthan, bearing no. 85/2018-AC dated 08.12.2018, wherein two gold rods, weighing 233.80 grams having 77% purity and valued at Rs.5,58,080/-, which were recovered from the Applicant, were absolutely confiscated under Sections 111(d), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalty of Rs.20,000/- was also imposed by the original authority on the Applicant herein, under Section 112(b)(i) of the Customs Act, 1962, which has been maintained in appeal.

2. Brief facts of the case are that the Applicant, a Pakistani national, arrived, on 08.09.2018, at LCS, Munabao, Barmer, Rajasthan, from Karachi and was intercepted by the Customs officers on the belief that the Applicant was carrying contraband/dutiable goods. After search of his person and of his baggage, 02 pieces of gold rod, which were stitched and concealed in the under garment that the Applicant was wearing, were recovered from the Applicant. The value of seized gold, of 77% purity, weighing 233.20 grams, was appraised at Rs.5,58,080/- by the Approved valuer. 02 pieces of gold rods, recovered from the Applicant, were seized under Section 110 of the Customs Act, 1962, under panchanama dated 08/09.09.2018. The Applicant, in his statement dated 09.09.2018, recorded under Section 108 of the Customs Act, 1962, admitted the recovery of 02 pieces of gold rods and agreed with the contents of the panchanama dated 08/09.09.2018. He further stated that the recovered gold bars were purchased from Pakistan with the intent to sell them in India to bear his expenses; that he was fully aware that the import of gold was liable to Customs duty; and that the smuggling of the same was a punishable offence.

3. The revision application has been filed canvassing that the import of gold is not prohibited; and that the gold may be released on payment of redemption fine and appropriate duty. Several case laws have been relied upon to support the request for redemption.

4. Personal hearing, in virtual mode, was held on 28.01.2022. Sh. Ajay Mishra, Advocate appeared for the Applicant and reiterated the contents of the RA. None appeared for the Respondent department nor a request for adjournment has been received.

5. The Government has carefully examined the matter. It is observed that the Applicant did not declare the gold brought by him under Section 77 of Customs Act, 1962 to the customs authorities at the LCS, Munabao after his arrival by rail. Further, the Applicant has admitted the recovery of gold from him, which was ingeniously concealed by stitching in the underwear that he was wearing, and the fact of non-declaration in his statement tendered under Section 108 of the Customs Act, 1962.

6. Section 123 of Customs Act 1962 reads as follows:

*"123. Burden of proof in certain cases.*

*(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be—*

*(a) in a case where such seizure is made from the possession of any person,—*

*(i) on the person from whose possession the goods were seized; and*

*(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;*

*(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.*

*(2) This section shall apply to gold and manufactures thereof watches, and any other class of goods which the Central Government may by notification in the Official Gazette, specify."*

Hence, 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 had failed to declare the gold rods and pay duty on the same. Further, the gold rods were ingeniously concealed inside the underwear he was wearing thereby making the intention to smuggle manifest. It is also noted that no documentary evidence has been produced to establish bonafide ownership. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123.

7.1 The Applicant has contended that the import of gold, in baggage, is not 'prohibited'. The Government observes that the Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293} 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*". The Assistant Commissioner, in paras 15 to 21 of the O-I-O dated 08.02.2018, has brought out that the gold is not allowed to be imported freely in baggage. 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, specifically in respect of gold, as under:

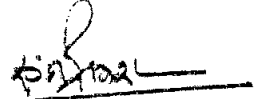
*"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions*

*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 The original authority has correctly brought out that, in this 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. Applicant has requested for release of offending goods by way of redemption under Section 125 of Customs Act, 1962. The Government observes that, in terms of Section 125 *ibid*, 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 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"*. 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"."* In the present case, the original authority has refused to grant redemption in the background of attempted smuggling by ingenious concealment with intent to evade Customs Duty. Thus, following the ratio of Raj Grow Impex (*supra*) and Sinnasamy (*supra*) the Order of the original authority, upheld by the Commissioner (Appeals), being an Order based on reasonable and relevant considerations, does not merit interference. The case laws relied upon by the Applicant are not applicable as these decisions have either been rendered before Raj Grow Impex and Sinnasamy or have been made without noticing the same.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

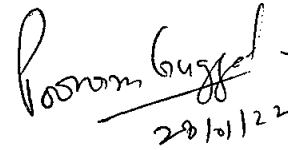
Sh. Girdhar Singh,  
Village Bavtara Tehsil Sayla,  
Distt. Jalore-343041, Rajasthan.

Order No. 30/22-Cus dated 28-01-2022

Copy to:-

1. The Commissioner of CGST, Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals), Central Excise & CGST, Jaipur, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur – 302 005.
3. Sh. Ajay Mishra, Advocate, Flat No. 3, VIP Apartment Sector-10, Vidhyadhar Nagar, Jaipur – 302 023.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



28/01/22

(Poonam Guggal)  
Suptd. RA