

**SPEED POST**



F. No. 375/39/B/2022-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 28/9/22

Order No. 301/22-Cus dated 28-09-2022 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/4060/2021-22 dated 11.02.2022 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Ms. Abida, Delhi.

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

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**ORDER**

A Revision Application No. 375/39/B/2022-RA dated 17.06.2022, has been filed by Ms. Abida, Delhi (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CC(A)Cus/D-I/Air/4060/2021-22 dated 11.02.2022, passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original, passed by the Additional Commissioner of Customs (Export), ICD, TKD, New Delhi, bearing no. 25/2017 dated 10.02.2017, wherein, gold bars, weighing 725 gms, valued at Rs. 16,90,584/-, recovered from the Applicant herein were confiscated absolutely. Penalty of Rs. 2,54,000/- was also imposed on the Applicant under Section 112 of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant arrived, on 21.12.2015, at IGI Airport, New Delhi, from Dubai. She was intercepted by the Customs officers near the exit gate after she had crossed the Customs green channel. On being asked whether she was carrying any dutiable goods, she answered in negative and in the column 6 of the disembarkation slip (customs portion), recovered from her, she had not declared any value of the dutiable goods carried by her. During her personal search, two cut pieces gold bars, collectively weighing 725 gms, wrapped in one packet of black colour, valued at Rs.16,90,584/-, were recovered, which were concealed in her rectum. In her statement dated 21.12.2015, tendered under Section 108 of Customs Act, 1962, the Applicant stated that the gold belonged to her husband who lived in Dubai and was purchased by him; that her husband had asked her to carry the gold to India by concealing the same in her rectum; and that she admitted her mistake of non-declaration to Customs on her part. The original authority, vide the aforesaid Order-in-Original dated 10.02.2017, confiscated absolutely the seized gold bars under Section 111(d), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962 and imposed a penalty of Rs. 2,54,000/- on the Applicant under Section 112 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 kept in the pocket of the jeans worn by the Applicant; that this is not a case of body concealment and hence not a case of smuggling; that the statement recorded by her is wrong and incorrect as it was recorded under pressure and false promise; that the Applicant sent a retraction of the statement vide letter dated 23.12.2015; that the said gold belongs to her husband and was purchased by him; that import of gold is not prohibited; and, hence, it should be released on payment of redemption fine under Section 125 of the Customs Act or allow release of gold on minimum redemption fine and on payment of token penalty.
4. Personal hearing was fixed on 05.09.2022, 16.09.2022 and 28.09.2022. In the hearing held on 28.09.2022, in virtual mode, no one appeared for the Applicant. However, written submissions have been filed by email dated 28.09.2022 wherein the Ld. Advocate for the Applicant also expressed her inability to attend the PH. Sh. Rajiv Ranjan, Supdt. appeared for the department and stated that this is rectum concealment case as evident from Panchnama dated 21.12.2015. He supported the orders of lower authorities.
5. The Government has carefully examined the matter. The authorities below have on the basis of Panchnama dated 21.12.2015 found that the gold had been concealed in her rectum by the Applicant and it was not found in the pocket of the trouser worn by her, as claimed now. Nothing has been brought on record to rebut this factual position recorded in the Panchnama. Hence, the subject contention of the Applicant that it is not a case of body concealment cannot be accepted.
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, the Applicant had failed to produce any evidence that the gold bars recovered from her was not smuggled. The gold bars were ingeniously concealed by her in her rectum and were not declared by the Applicant to the Custom officers, as required under Section 77 of Customs Act, 1962. The Applicant has also failed to produce any document evidencing licit possession of the recovered gold. The

Applicant has, thus, failed to discharge the burden placed on her, in terms of Section 123, *ibid*.

7. As regards, the retraction filed by the Applicant, it is evident that the Applicant was apprehended after she had crossed the green channel and gold was recovered from her rectum. Therefore, the relevant sequence of events recorded in the Panchnama also substantiate the acts of Applicant in an attempt to smuggle the confiscated goods. The Commissioner (Appeals) has correctly questioned the authenticity of the retraction, filed by the Applicant vide letter dated 23.12.2015 which did not bear any stamp evidencing any receipt by the authorities. It is also observed that the issue of retraction was never raised before the original authority. Further, the Hon'ble Supreme Court has, in the case of *Surjeet Singh Chhabra vs. U.O.I* {1997 (89) ELT 646 (SC)}, held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. 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 her involvement in the case of smuggling by concealing the same in her rectum as per the advice of her husband. The admissions made are corroborated by other material on record, as discussed hereinabove. Therefore, there is no doubt that the statement tendered were voluntary. As such the culpability of the Applicant is well established.

8.1 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. {Ref. *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors* 1983(13)ELT 1439(SC)}, *M/s. Om Prakash Bhatia vs Commissioner of Customs, Delhi* {2003(155) ELT 423(SC)}. In the recent 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."*

8.2 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----."*

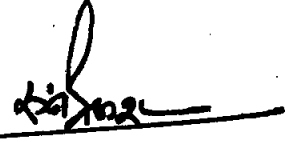
8.3 Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfillment of certain conditions. In this case, since the conditions, subject to which gold could have been legally imported, have not been fulfilled, there is no doubt that the subject goods are 'prohibited goods'.

9. The original authority has denied the release of impugned 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 brought out in para 4.1 & 5 of the Order-in-Original. Thus, the Commissioner (Appeals) has correctly refused to interfere in the matter.

10. The penalty imposed is just and fair in the facts and circumstances of the case.

11. In view of the above, the impugned Order of the Commissioner (Appeals) does not merit revision and the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


Ms. Abida,  
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Shalimar Bagh, Delhi-110088.

Order No. 301/22-Cus dated 23-09-2022

Copy to:

1. The Commissioner of Customs, IGI Airport, New Delhi.
2. The Commissioner of Customs (Appeals), NCH, New Delhi.
3. Sh. D. S. Chadha, Advocate, 92, Ground Floor, Block-V, Eros Garden, Faridabad-121009.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED

  
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