

SPEED POST



F. No. 373/413/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..18/10/22

Order No. 321/22-Cus dated 17-10-2022 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. CAL-EXCUS-000-APP-356-2019 dated 29.03.2019, passed by the Commissioner of Customs (Appeals), Cochin.

Applicant : Sh. Sadique Kodassery Parambil, Kozhikode

Respondent : Commissioner of Customs (Preventive), Cochin.

ORDER

A Revision Application, bearing No. 373/413/B/2019-RA dated 14.10.2019, has been filed by Sh. Sadique Kodassery Parambil, Kozhikode (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CAL-EXCUS-000-APP-356-2019 dated 29.03.2019, passed by the Commissioner of Customs (Appeals), Cochin. The Commissioner (Appeals) has upheld the Order-in-Original of the Joint Commissioner of Customs, Calicut Commissionerate, Calicut, bearing no. 34/2015-16 dated 11.01.2016, except to the extent of setting aside the penalty imposed under Section 114AA of the Customs Act, 1962. Vide the aforementioned Order-in-Original, 03 gold chains brought by the Applicant, collectively weighing 715 grams and valued at Rs. 21,77,890/-, had been absolutely confiscated under Section 111(d), 111(i), 111(j), 111(l), 111(m) & 111(o) of the Customs Act, 1962. Besides, penalties of Rs. 2,00,000/- & Rs. 2,00,000/- were imposed on the Applicant, under Sections 112(a)&(b) & 114AA respectively, of the Act, *ibid.*

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived at Calicut International Airport, from Doha, on 20.04.2014, while he was proceeding towards and was about to cross the exit gate of Customs Baggage Hall, after having opted for Green Channel clearance. On enquiry by the Customs Officers as to whether he was in possession of any non-duty paid gold or any other valuables, he replied in negative. He had declared total dutiable goods imported as Rs. 10,000/- under his Customs Declaration under Section 77 of the Customs Act, 1962. On his personal search 03 gold chains of 24 carat purity, collectively weighing 715 gms, were found wrapped securely with adhesive tape and concealed inside the socks worn on his right foot. The market value of the said gold chains was ascertained at Rs. 21,77,890/-. The Applicant was not in possession of any foreign currency to pay the customs duty. The Applicant, in his statement dated 20.04.2014, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that he stayed abroad only for eleven months during his last stay; that one of his friends, namely, Puthur Omassery Nadammel Poyil Riyaz, called him and asked him to carry some gold alongwith him; that he promised him remuneration of Rs. 25,000/- for this and he further informed that this money will be handed over to him at the time of collecting the gold from his residence through his representative and he agreed for that; that Sh. Riyaz handed over him 24 carat gold chains totally weighing 715 gms; that he did not declare the concealed gold before Customs; and that he did not have any foreign currency to pay duty on the said gold.

3. The revision application has been filed mainly, on the grounds that the Applicant was coming after a lapse of 11 months; that he was prepared to pay duty in foreign currency provided an opportunity was given; that he is a bonafide passenger never involved in any smuggling activities; that the confiscated gold may be released on

redemption fine; that re-export ought to have been allowed; and that penalty imposed is highly excessive.

4. Personal hearing was fixed on 30.09.2022 & 17.10.2022. In the hearing held on 17.10.2022, in virtual mode, Sh. K.M Suresh Chandran, Advocate appeared for the Applicant and reiterated the contents of the Revision Application. He stated that passenger is an eligible passenger as he had returned after 11 months' stay abroad. Hence, the goods may be allowed to be redeemed on payment of fine and applicable duty. An unidentified person joined the link from the side of the department but did not participate in the hearing despite being repeatedly asked to do so. Hence, it is presumed that the Respondent department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed that the Applicant was intercepted at the Exit Gate after passing through the Green Channel. The Applicant admitted the recovery of gold chains from him and that he intended to clear the gold by way of concealment for monetary benefit of Rs. 25,000/-. No foreign currency was found in his possession to pay duty, in case he had intended to claim benefit of concessional rate of duty. Therefore, it is incorrect of the Applicant to contend that he was prepared to pay duty in foreign currency provided an opportunity was given.

6. As per Section 123 of Customs Act 1962, 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. The Applicant did not declare the gold chains, as required under Section 77 of the Act, *ibid*. Further, the Applicant was intercepted at the exit gate after passing through the Green Channel. No document evidencing ownership and licit purchase have also been placed on record. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Further, the import of gold, in baggage, is allowed subject to certain conditions. Nothing has been brought on record to establish that, in the present case, these conditions have been fulfilled. Thus, the Government holds that the lower authorities have correctly held the goods to be liable to confiscation under Section 111 of the Act, *ibid*, as 'prohibited goods'.

7. The contention of the Applicant is that he was returning after a stay of 11 months abroad and he is an 'eligible passenger'. The Government observes that this contention was also raised before the original authority who has dealt with the matter in detail in para 23 of the OIO. The Government is in agreement with the findings recorded by the original authority. It is observed that for grant of benefit of concessional rate of duty, under Notification no. 12/2012-Cus dated 17.03.2012 (condition 35), an eligible passenger is required to make a declaration before the proper officer of customs. In the present case, such a declaration is not made. Hence, the subject contention of the Applicant is not acceptable.

8. The original authority has denied the release of subject 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. Thus, the Commissioner (Appeals) has correctly refused to interfere in the matter.

9. Other contention of the Applicant is that re-export of gold was not considered. Section 80 of the Customs Act, 1962, reads as follows:

"Temporary detention of baggage. - Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name"

On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of Deepak Bajaj vs Commissioner of Customs (P), Lucknow {2019(365) ELT 695(All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export under Section 80 of the Act, *ibid*. In this case, as already held, the Applicant had not made a true declaration under Section 77. Hence, there is no infirmity in the orders of lower authorities, on this count.

10. In the facts and circumstances of the case, the quantum of penalty imposed, under Section 112 of the Act, *ibid*, is just and fair.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

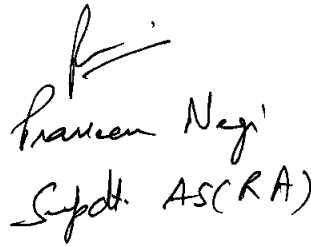
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Order No. 32/122-Cus dated 17-10-2022

Copy to:

1. The Commissioner of Customs (Appeals), C.R Building, I.S Press Road, Kochi-682018
2. The Commissioner of Customs (Preventive), 5th Floor, Catholic Centre, Broadway, Cochin-682031.
3. Sh. K.M Suresh Chandran, Advocate, 9/426, Court Road, Calicut, Kerala-673001.
4. PA to AS(RA).
5. Guard File.
6. ~~Spare Copy~~

ATTESTED



Prasen Negi
Suptt. AS(RA)