

**SPEED POST**



F. No. 373/38/B/2016-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...27/10/22

Order No. 327/22-Cus dated 27-10-2022 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 C.Cus-I No. 8/2016 dated 29.01.2016 passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Meganatha Rao Karthick Rao, Chennai

Respondent : Pr. Commissioner of Customs, Anna International Airport, Chennai.

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**ORDER**

A Revision Application, bearing No. 373/38/B/2016-RA dated 22.03.2016, has been filed by Sh. Meganatha Rao Karthick Rao, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal C.Cus-I No. 8/2016 dated 29.01.2016, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the Order-in-Original of the Additional Commissioner of Customs, Anna International Airport, Chennai, bearing no. 296/2015-16-Airport dated 11.09.2015. Vide the aforementioned Order-in-Original gold watch case with base, gold buckle and gold belt keeper brought by the Applicant, collectively weighing 442 grams and valued at Rs. 11,79,256/-, had been absolutely confiscated under Section 111(d) & 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 1,15,000/- was also imposed on the Applicant, under Section 112(a) of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived at Anna International Terminal of Chennai Airport, from Bangkok, on 05.07.2015, while he was walking out through the Green Channel. On enquiry by the Customs Officers as to whether he was in possession of gold/contraband, he replied in negative. He had declared total dutiable goods imported as NIL under his Customs Declaration, under Section 77 of the Customs Act, 1962. On his personal search, gold watch case with base, gold belt buckle and gold belt keeper, collectively weighing 442 gms were recovered from him. The market value of the said gold items was ascertained at Rs. 11,79,256/-. The Applicant, in his statement, recorded under Section 108 of the Customs Act, 1962, immediately after seizure, *inter-alia*, stated that one unknown person approached him and gave him the watch and belt to hand over the same to another person outside Chennai Airport on his arrival at Chennai and promised him to pay Rs. 5,000/-; that he was told to wear the watch which was actually having gold at its case and bottom and the belt which had its buckle and keeper made of gold; that he should smuggle the same out of Chennai Airport without declaring to Customs; that the gold would not be detected by Customs at Chennai Airport as the same was coated with black colour paint; that convinced by these words and lured by the offer of money, he decided to smuggle the same into India by way of concealment and non-declaration to Customs at

Chennai Airport on his arrival on 05.07.2015 so that he can get Rs. 5,000/-; that therefore, he attempted to pass through the exit after opting for green channel of the Customs without declaring to Customs; and that he admitted that he had committed the offence for monetary benefit and requested to be pardoned.

3. The revision application has been filed, mainly, on the grounds that the Applicant had worn the gold based watch in his wrist and black radium gold belt in his waist which he declared at the time of questioning by the officials under section 77 of the Customs Act, 1962; that his statement was recorded under threat and coercion; that he had travelled first time abroad and he had not known the existing rules and regulations and he had not violated any condition, time being in force voluntarily; that the goods are not prohibited items; that the lower authorities failed to use discretionary powers to re-export the said gold items under section 125(1) of the Act, *ibid*; and that the penalty imposed on him is unreasonable, unjust and exorbitant.

4. Personal hearing was fixed on 12.11.2018, 20.08.2021, 27.08.2021, 26.10.2021, 09.11.2021, 06.10.2022 and 27.10.2022. No one appeared for either side nor any request for adjournment has been received. However, written submissions dated 18.10.2022 have been filed on behalf of the Applicant which are taken on record.

5. The Government has carefully examined the matter. It is observed that the Applicant was intercepted while he was passing through the Green Channel. The Applicant admitted the recovery of gold items from him and that he intended to clear the gold by way of concealment for monetary benefit of Rs. 5,000/-. He made NIL declaration in his Customs Declaration Card regarding dutiable items brought by him. Therefore, it is incorrect of the Applicant to contend that he had declared the gold items under Section 77 of the Customs Act, 1962. Further, no material has been placed on record to support the allegation that his statement was recorded under threat or coercion. As such, the claim to this effect is not tenable. As regards, the contention of the Applicant that he did not violate the rules and regulations voluntarily as he was unaware of the existing rules and regulations, it is trite that ignorance of law is not an excuse. Hence, this contention also does not merit consideration.

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 items as stipulated under Section 77 of the Act, *ibid*. Further, the Applicant was intercepted while passing through the Green Channel. No document evidencing ownership and licit purchase have also been placed on record. The gold items were camouflaged in order to conceal their true nature. Hence, the intention to smuggle is manifest. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Keeping in view the facts of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government holds that the lower authorities have correctly held the goods to be liable to confiscation under Section 111 of the Act, *ibid*.

7.1 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. 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". 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 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 (i.e the jurisdictional 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, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

8. 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."* Such a case is not made out. Hence, the order of absolute confiscation could not have been interfered with.

9.1 Other contention of the Applicant is that re-export of gold was not considered. This contention is reiterated in the written submissions dated 18.10.2022.

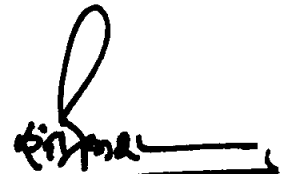
9.2 The Government observes that a specific provision regarding re-export of baggage articles is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. The said Section 80 reads as follows:

"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"

9.3 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, the Applicant had not made a true declaration under Section 77. Hence, the question of allowing re-export does not arise.

10. In the facts and circumstances of the case, the quantum of penalty imposed is just and fair.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

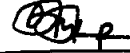
Sh. Meganatha Rao Karthick Rao  
No. 49/57, Rettai Kuzhi Lane  
Tondiarper, Chennai-600081

Order No. 327/22-Cus dated 27-10-2022

Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001
2. The Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai-600027.
3. Sh. A. Manoharan & S. Prabhu, Advocates, 5/1, Tippu Sahib Street, Triplicane, Chennai-600005.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy

ATTESTED



27-10-22

(लक्ष्मी राघवण)

(Lakshmi Raghavan)

अनुभाग अधिकारी / Section Officer

वित्त मंत्रालय (राजस्व विभाग)

Ministry of Finance (Deptt. of Rev.)

भारत सरकार / Govt. of India

नई दिल्ली / New Delhi