

**SPEED POST**



F. No. 380/04/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 27/10/22

Order No. 329 /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 LUD-EXCUS-001-APP-23-2022 dated 09.03.2022 passed by the Commissioner (Appeals), CGST, Ludhiana.

Applicant : The Commissioner of Customs, Ludhiana.

Respondent : Sh. Hemant, Gurdaspur.

**ORDER**

A Revision Application No. 380/04/B/2022-RA dated 30.05.2022 has been filed by the Commissioner of Customs, Ludhiana (hereinafter referred to as the Applicant department) against the Order-in-Appeal No. LUD-EXCUS-001-APP-23-2022 dated 09.03.2022 passed by the Commissioner (Appeals), CGST, Ludhiana. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original of the Joint Commissioner of Customs, Ludhiana bearing No. LDH-CUS-JC-RRG-079-18-19 dated 06.12.2018.

2. The brief facts of the case are that Sh. Hemant, Gurdaspur (hereinafter referred to as the Respondent) alongwith Ms. Shamma Rani arrived, on 23.03.2018, at Chandigarh International Airport, Mohali from Bangkok. They were intercepted by the Customs officers, while they were trying to cross the Green Channel and were diverted towards the Red Channel. The Customs officer asked them whether they were carrying gold or restricted/contraband items, in any form, in their possession to which they replied in negative. During personal search of both of them, a bag (Potly) tied around the waist which contained some heavy metallic object was recovered from the Respondent. On opening the bag (Potly), one gold brick, weighing 1000 gms and one cut piece of gold brick, weighing 500 gms, were recovered. Both the bricks were joined with transparent tape. A bill of purchase of gold in the name of the Respondent was also recovered. The said gold bricks were brought by way of concealment without making statutory declaration under Section 77 of the Customs Act, 1962. However, nothing objectionable/contraband was recovered from Ms. Shamma Rani. The value of concealed gold, totally weighing 1500 Grams, was appraised at Rs.47,25,000/- by the approved/ authorized valuer at the airport. The gold bricks, recovered from the Respondent, were seized under Section 110 of the Customs Act, 1962, under Panchnama dated 23.03.2018. The Respondent, in his statement dated 23.03.2018, recorded under Section 108 of the Customs Act, 1962, inter-alia, stated that he alongwith his mother went to Bangkok on 20.03.2018 via Air India Airline from Chandigarh (Mohali) and came back to India at Chandigarh

International Airport, Mohali; that after reaching there he was lured by some person who was speaking Punjabi language who convinced him to earn easy money by way of smuggling gold from Bangkok to India and due to greed he agreed to the proposal; that on 22.03.2018 he went with him at a Jewellery shop in the name and style of M/s Johny BKK, 9999 and purchased 1500 gms gold for 20,02,500 Baths against Bill No. Nil dated 22.03.2018 in his name and passport No., the said bill was recovered by the Customs officers during his personal search; that the gold was handed over to him by person at Bangkok Airport; that the gold would be collected by some person from his residential address already taken by the person at the first meeting at Bangkok. The original authority, after following the principles of natural justice, ordered for absolute confiscation of seized gold, under Section 111(d), (l) & (m) of the Customs Act, 1962 and imposed a penalty of Rs. 2,00,000/- on the Applicant herein under Section 112(a) of the Act, ibid. In the appeal filed by the Applicant herein, the Commissioner (Appeals) modified the Order-in-Original to the extent of allowing redemption of the offending goods on a payment of redemption fine of Rs. 4,72,500/-.

3. The revision application has been filed, mainly, on the grounds that the Respondent had attempted to clear the gold without payment of duty; that there was an ingenious concealment and thus the import of gold is not bonafide; that the import of the gold is prohibited and, therefore, release of the gold on payment of redemption fine and penalty is not correct. A written reply dated 28.08.2022 has been filed on behalf of the Respondent.

4. Personal hearing was granted on 02.08.2022, 18.08.2022, 06.10.2022 and 27.10.2022. In personal hearing held, in virtual mode, on 27.10.2022, Ms. Sunita Kamboj, Superintendent appeared for the Applicant department and reiterated the contents of the RA. A written submission dated 27.10.2022 has been filed by Sh. S.S Arora, Advocate on behalf of the Respondent.

5. The Government has examined the matter carefully. It is observed that the Respondent did not declare the gold brought by him, as required under Section 77 of Customs Act, 1962, to the Customs Authorities at the airport. Further, manner of concealment makes it evident that it is a case of pre-meditated attempt at smuggling. The Respondent has admitted the recovery of gold from him and the fact of non-declaration in his statement tendered under Section 108 of Customs Act, 1962. The issues of smuggling of gold, its liability to confiscation and it being prohibited goods stand settled with the order of Commissioner (Appeals) as the same has not been challenged by the Respondent herein by way of an appropriate revision application. The only question that, therefore, needs to be examined is whether the order of Commissioner (Appeals) releasing the goods on payment of redemption fine is sustainable.

6.1 The original adjudicating 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 UOI vs. Raj Grow Impex LLP{2021(377)ELT 146 (SC)}, 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) ELT 1154 (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.*"

6.2 In the present case, the original authority has ordered for absolute confiscation on the grounds that the seized gold constituted, 'prohibited goods'; that the Respondent failed to make the requisite declaration; and that the Applicant was attempting to smuggle gold by way of concealment (ref. para 4.10 of the OIO). Thus, it is evident that the original authority has exercised his discretion for relevant and reasonable considerations and the order does not suffer from any perversity or patent illegality. As such, following the ratio of decisions cited supra, it was not open to the Commissioner (Appeals) to interfere in the matter. Thus, the Government holds that the order of Commissioner (Appeals) allowing redemption of confiscated gold cannot be sustained.

6.3. The case laws relied upon by the Respondents, in support of the order of Commissioner (Appeals), are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

7. In view of the above, the impugned OIA dated 09.03.2022 is set aside and the OIO dated 06.12.2018 is restored. The revision application is allowed in above terms.



(Sandeep Prakash)  
Additional Secretary to the Government of India

The Commissioner of Customs,  
Custom House, G.T Road, Sahnewal  
Ludhiana-141120

Order No. 329/22-Cus dated 27-10-2022

Copy to:

1. Sh. Hemant, S/o Sh. Raj Kumar, Monea Mohalla, Near Bawa Lal Mandir, Batala, Gurdaspur-143505.
2. The Commissioner (Appeals), CGST, GST Bhawan, F-Block, Rishi Nagar, Ludhiana-141001.
3. Sh. S.S Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi-110029.
4. Guard File.
5. PA to AS(RA).
6. ~~Guard File~~ Spare Copy

ATTESTED



27.10.22

(लक्ष्मी राघवन)  
(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