

SPEED POST



F. No. 373/80/B/2018-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. 07/02/23

Order No. 36 /23-Cus dated 07-02-2023 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 129DD of the Customs Act, 1962, against the Order-in-Appeal No. Seaport. C. Cus.II.-22/2018 dated 31.01.2018, passed by the Commissioner of Customs (Appeal-II), Chennai.

Applicant : Sh. P. Marimuthu, Madhavaram, Chennai.

Respondent : The Pr. Commissioner of Customs, Chennai-III.

.....

ORDER

A Revision Application No. 373/80/B/2018-RA dated 23.02.2018 has been filed by Sh. P. Marimuthu, Madhavaram, Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. Seaport. C. Cus. II. - 22/2018 dated 31.01.2018, passed by the Commissioner of Customs (Appeal-II), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 58929/2017 dated 12.10.2017, passed by the Additional Commissioner of Customs, Chennai-III.

2. Briefly stated, the officers of DRI, Chennai Zonal Unit, acting on a specific information regarding smuggling of gold, on 21.04.2016, intercepted the Applicant herein opposite the exit gate of the Broadway Bus Stand, when he was travelling in the auto rickshaw having registration no. TN 18Q 7223. On being enquired, whether the Applicant was in possession of any foreign origin gold on his person or in the auto Rickshaw, he replied in negative. On persistent enquiry, the Applicant produced three black colour packets and informed that the packets contained foreign origin gold which he had just received from a person. On examination of three black colour packets, 16 gold bars of foreign origin, purity 24 carat, totally weighing 1600 gms, were recovered which were appraised & valued at Rs. 47,53,600/- by the Govt. approved valuer. On further enquiry, he also disclosed that on 20.04.2016, he had received 24 carat gold jewellery weighing 02 kg from one Srilankan National and kept the same in his house. Consequently, the DRI officers searched the residential premises of the Applicant and recovered gold jewellery weighing 1449 gms containing 08 gold bangles, one gold chain with 6 coins & 01 pendant, one gold chain with 4 coins and 05 nos. of strips of gold sheets, purity 24 carat, collectively valued at Rs. 43,04,979/-, as per valuer report. Further, during search of business premises of the Applicant by the DRI officers, 98 gms of cut pcs of gold, wrapped in

one packet in black tapes, purity 24 carat, valued at Rs. 2,91,158/-, were recovered from the possession of one person, namely, Sh. Mathiazhagan. Furthermore, during search of room at Kavithaanjali Guest House, Chennai, the officer of DRI recovered, 04 big gold bangles, 04 baby gold bangles, 01 gold chain with pendant, 01 gold foil, totally weighing 334 gms, purity 24 carat, valued at Rs. 9,92,314/-, from Sh. Paransothy, a Srilankan National who was staying in the guest house along with his wife and child. Statements of the Applicant herein were recorded, under Section 108 of the Customs Act, 1962, on 21.04.2016 and 15.09.2016, wherein he, inter-alia, stated that he had been in jewellery business from the age of 16 years; that he came to know that he would get more profit by dealing in the 24 carat gold/ gold jewellery smuggled into through coastal areas and airports; that he initially started selling gold bars/ gold jewellery smuggled through Chennai airport and coastal areas; that on 21.04.2016, about 6.30 hrs, he received call from one unknown person who informed that he (unknown person) was near Broadway Bus Stand and having three packets containing gold; that he engaged auto rickshaw no. TN 18Q 7223 and reached Broadway Bus Stand; that when he was sitting in the auto rickshaw, one person (unknown person) in green shirt approached the auto and on identifying him, he (unknown person) boarded the auto rickshaw and handed over three black colour packets containing gold smuggled from coastal area; that when he was about to leave the place, the officers intercepted him and enquired about the possession of gold; that initially he denied but later on admitted and handed over three black colour packets containing gold; that he admitted that he had received gold jewellery from a Srilankan at Geethaanjali Lodge and kept it in his residence; that he was not in possession of any legal documents for the possession of the recovered gold bars (1660 gms)/ gold jewellery (1449 gms) recovered under Mahazar(s) both dated 21.04.2016, from him and from his residence; that he used to receive smuggled gold in the form of gold bits (presently recovered 98 gms) from Muniandi at his business premises; that he was supposed to receive the gold jewellery (334 gms) recovered

from Kavithaanjali Hotel through Sh. Panneerselvam; that he knew that gold bars/ jewellery were smuggled into India from Sri Lanka on sea route. Accomplices of the Applicant herein admitted their roles in the smuggling activities in their respective statements recorded, under Section 108 ibid, on 21.04.2016 and 30.08.2016. The original authority, vide the aforesaid Order-in-Original dated 12.10.2017, ordered for absolute confiscation of the subject gold bars/ gold jewellery/ gold bits, collectively weighing 3481 gms, totally valued at Rs. 1,03,43,510/-, under Sections 111(a), 111(d), 111(l) and 120(1) of the Customs Act, 1962. Penalty of Rs. 10,00,000/- was also imposed on the Applicant herein under Section 112 of Act, ibid. The appeal filed by the Applicant herein has been rejected by the Commissioner (Appeals).

3. The revision application has been filed, mainly, on the grounds that the appellate authority simply glossed over all the judgments and points raised in the appeal grounds and no reason has been given to reject the appeal; that the Applicant never received the gold from the ladies at Kavithaanjali Lodge, T. Nagar; that there are several contradictions and inconsistency and the same is not corroborated and hence, the impugned order is vitiated on this point; that the provisions of Section 125 have not been incorporated in the SCN; that burden of proof that the goods are smuggled, is not applicable when the goods were seized during local transport at a place irrelevant for the applicability of the Customs Act, and its activities; that gold is dutiable goods not prohibited under the Act, ibid but restricted as per Foreign Trade Policy; that the penalty is very high and unreasonable and hence, the same to be reduced substantially and reasonably.

4. Personal hearing in the matter was fixed on 13.01.2023 and 30.01.2023. Smt. Kamalamalar Palanikumar, Advocate, vide email dated 30.01.2023, informed her inability to attend the PH and requested to pass an order with the available records and show leniency while passing order. No one appeared for the department nor

any request for adjournment has been received. Therefore, it is presumed that neither the Applicant nor the department is interested to add anything in the matter.

5.1 The Government has carefully examined the matter. It is observed that the Applicant was in receipt of smuggled gold brought by various persons/ passengers from Sri Lanka into India either through coastal areas and through Chennai Airport. The Applicant after being intercepted, could not produce any documents evidencing licit possession of the recovered goods. This position has also been admitted by him in his statements recorded under Section 108 *ibid*. There is nothing on record that either statements of the Applicant or any of his accomplices have been retracted at any stage.

5.2 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 has failed to submit any document evidencing ownership and licit possession of gold bars/ gold jewellery recovered from his possession, residence and business premises. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*.

6.1 The original authority has denied the release of seized gold on payment of redemption fine under Section 125 of Customs Act, 1962, which has been assailed in the revision application. It is observed that the lower authorities have held the seized gold to be 'prohibited goods'. The Government is in agreement with these findings as these are in line with the decisions of the Hon'ble Supreme Court in the cases of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155) ELT423(SC)}, and UOI & Ors vs. M/s Raj Grow Impex LLP & Ors {2021 (377) ELT 145 (SC)}. In the case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016 (341) ELT 65

(Mad.)], the Hon'ble Madras High Court (i.e., the jurisdictional High Court) has summarized the position on the issue, 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-----."

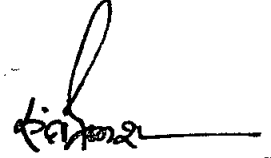
The judgment in Malabar Diamond Gallery (supra) has been followed by the Hon'ble Madras High Court in the case of P. Sinnasamy {2016 (344) ELT 1154 (Mad.)} as well. Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject goods are 'prohibited goods'.

6.2 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 P. Sinnasamy (supra), the Hon'ble Madras High Court has held that *"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 original authority has after appropriate consideration denied redemption for relevant and reasonable considerations, as brought out in para 57 to 63 of the OIO. Hence, the Commissioner (Appeals) has correctly refused to interfere in the matter.

7. In the facts and circumstances of the case and specifically keeping in view the fact that the Applicant herein was involved in large scale smuggling of gold in association with his various accomplices, the penalty imposed is neither harsh nor excessive.

8. In view of the above, the Revision Application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

Sh. P. Marimuthu,
No. 5B, Punkraj Nagar,
1st Main Road, 5th Street,
Madhavaram, Chennai – 600 060


Order No. 36 /23-Cus dated 07-02-2023

Copy to:

1. The Pr. Commissioner of Customs, Chennai-III, New Customs House, 60, Rajaji Salai, Chennai – 600 001.
2. The Commissioner of Customs (Appeals-II), New Customs House, 60, Rajaji Salai, Chennai – 600 001.
3. Smt. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai – 600 001.
4. PPS to AS(RA)
5. Guard file.

6. Spare copy.
7. Notice board.

ATTESTED


नरेंद्र कुमार सिंह / Narender Kumar Singh
अधीक्षक / Superintendent (R.A. Unit)
वित्त विभाग / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 606, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110086