

SPEED POST



F. No. 373/06/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. 12/12/22

Order No. 379 /22-Cus dated 12-12-2022 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. 977/17 dated 28.11.2017, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Smt. Masuma Riasat Ali, Mumbai.

Respondent : Pr. Commissioner of Customs, Kempegowda International Airport, Bengaluru.

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ORDER

A Revision Application, bearing No. 373/06/B/2018-RA dated 15.01.2018, has been filed by Smt. Masuma Riasat Ali, Mumbai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 977/17 dated 28.11.2017, passed by the Commissioner of Customs (Appeals), Bengaluru. The Commissioner (Appeals) has upheld the Order-in-Original of the Joint Commissioner of Customs, Airport, Kempegowda International Airport, Bengaluru bearing no. 001/2016-17(AP-ADM) dated 25.04.2016. Vide the aforementioned Order-in-Original, 04 gold washers of 24 carat purity, brought by the Applicant, collectively weighing 169 grams and valued at Rs. 4,45,315/-, had been absolutely confiscated under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalties of Rs. 1,35,000/- & Rs. 90,000/- were imposed on the Applicant, under Sections 112 & 114AA, respectively, of the Act, *ibid*.

2. Brief facts of the case are that the Applicant who had arrived at Bengaluru from Dubai, on 20.01.2016, was intercepted by the Customs officers at the Customs Arrival Hall. Verification of her Customs Declaration Form indicated that she had not mentioned any value against the value of dutiable goods being imported and had ticked 'No' against SI No. 10 in respect of import of gold items. Upon search of her one hand bag (stroller bag) 04 gold washers of 24 Karat/99.50% purity gold, totally weighing 169 grams and valued at Rs. 4,45,315/-, were recovered which were concealed in wheel portion of her stroller bag. The Applicant in her statement dated 20.01.2016, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that she visited Dubai on 15.01.2016 to bring some home equipment for her daughter; that, while in Dubai an unknown person contacted her, who offered to pay her Rs. 10,000/-, if she would carry one blue colour strolley bag concealed with gold inside the bag to India; and that he also told her to keep the bag at her house in Mumbai which he would collect when he visits Mumbai shortly by contacting her on her phone.

3. The revision application has been filed praying that absolute confiscation be set aside; and Personal Penalty and Redemption Fine be reduced.

4. Personal hearing was fixed on 31.10.2022, 18.11.2022 & 09.12.2022. In the hearing held on 09.12.2022, in virtual mode, Sh. Prakash Shingrani, Advocate appeared for the Applicant and reiterated the contents of the Revision Application. He supported his contentions relying upon Order No. 277-79/2022-Cus dated 23.09.2022, No. 299/2022-Cus dated 22.10.2022, 349/2022-Cus dated 29.11.2022 & 352/2022-Cus dated 30.11.2022 passed by AS(RA), Mumbai. No one appeared for the Respondent department. Hence, it is presumed that the Respondent department has nothing to add in the matter.

5. The Government has carefully examined the matter. The Applicant has not disputed the order of confiscation of goods and the imposition of penalty upon her. Therefore, the issues of confiscability of the seized goods and liability to penalty under Sections 112 & 114AA stand concluded with the order of Commissioner (Appeals). The contention of the Applicant is that the absolute confiscation be set aside and penalty as well as R.F be reduced. At the outset, it may be observed that the authorities below have not allowed redemption of goods and, as such, no redemption fine (RF) has been imposed. Therefore, the question of reducing RF, which was never imposed, cannot arise.

6. The Government observes that import of gold and articles thereof in baggage is allowed subject to fulfillment of certain conditions. In the present case, it is not ever contended that these conditions were fulfilled by the Applicant herein. It is settled by a catena of judgments of Hon'ble Supreme Court that goods, in respect of which conditions subject to which their import/export is allowed are not fulfilled, are to be treated as 'prohibited goods'. [Ref: Sheikh Mohd. Omer {1983 (13) ELT 1439 (SC), Om Prakash Bhatia {2003 (155) ELT 423 (SC)} & Raj Grow Impex LLP {2021 (377) ELT 145 (SC)}]. Further, the Hon'ble Madras High Court has in the cases of Malabar Diamond Gallery P. Ltd. {2016 (341) ELT 465 (Mad.)} and P. Sinnasamy {2016 (344) ELT 1154 (Mad.)} taken this view specifically in respect of gold. Hence, there is no doubt that the goods seized in the present case are to be held to be 'prohibited goods'.

7. 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."* Thus, the discretion exercised by the original authority could have been interfered with only if it suffered from any of these vices. Such a case is not made out. Thus, the Commissioner (Appeals) has correctly refused to interfere in the matter.

8. The decisions relied upon by the Applicant, during the course of personal hearing, are of no assistance to the Applicant's case in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

9. In the facts and circumstances of the case, specifically keeping in view the ingenious manner of concealment, the quantum of penalty imposed is just and fair.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

Smt. Masuma Riasat Ali
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Order No. 379/22-Cus dated 12-12-2022

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. The Pr. Commissioner of Customs, Airport and Air Cargo Complex, AT SATS Terminal, Bengaluru-560300.
3. Sh. Prakash K. Shingrani, Advocate, High Court, 12/334 Vivek, New MIG Colony, Bandra(E), Mumbai-400051.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED



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