

**SPEED POST**



F. No. 373/40/B/2017-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...23/12/22

Order No. 400/22-Cus dated 23-12-2022 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 129DD of the Customs Act, 1962 against the Order-in-Appeal 350/2016 dated 07.12.2016, passed by the Commissioner of Customs (Appeals), Chennai.

Applicant : Sh. Abdul Rahiman Hajee Ahmed, Kasargod, Kerala.

Respondent : The Pr. Commissioner of Customs, Airport, Chennai

.....

**ORDER**

A Revision Application No. 373/40/B/2017-RA dated 09.03.2017 has been filed by Sh. Abdul Rahiman Hajee Ahmed, Kasargod, Kerala (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 350/2016 dated 07.12.2016, passed by the Commissioner of Customs (Appeals), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 486/2016-17-Airport dated 27.02.2016, passed by the Additional Commissioner of Customs, Airport, Chennai.

2. Briefly stated, the Applicant herein arrived at the Chennai International Airport, on 27.10.2015, from Dubai via Muscat. He was intercepted by the Customs officers while passing through the green channel. On being questioned about the possession of any contraband goods, he replied in negative and handed over the Custom Declaration Form wherein he had declared the value of the dutiable goods as Rs. 5000/-. On search of his checked-in baggages, 24 Carat gold in the form of foils, totally weighing 635 gms, concealed in false top appeared to have been made from the inner side of the top portion of red & navy blue colour "MC Polo" stroller suitcase and red & grey colour "A Admiral's" stroll suitcase, was recovered. The Govt. approved valuer appraised the value of the recovered gold as Rs. 17,17,040/-. A statement of the Applicant herein was recorded, under Section 108 of the Customs Act, 1962, on 27.10.2015, wherein he, inter-alia, stated that one unknown person handed over the recovered gold concealed in two suitcases when he was approaching for checking-in and offered him Rs. 22,000/- for smuggling of the gold without declaring to the Customs and to hand it over to receiver outside Chennai airport. The Applicant admitted in his statement that the gold did not belong to him and he would not make any claim for the same and, that he admitted that he had committed the offence for monetary benefit and requested to be pardoned. The original authority, vide the aforesaid Order-in-Original dated 27.02.2016, ordered for

absolute confiscation of the subject gold, under Sections 111(d) and (l) of the Customs Act, 1962. Penalty of Rs. 1,70,000/- was also imposed on the Applicant herein under Section 112 (a) 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 it is not correct that the original authority had decided the case on the basis of waiver of show cause notice purportedly given by the Applicant vide letter dated 27.10.2015; that the Respondent ought to have applied Section 125 of the Customs Act, 1962 and given an option to pay fine in lieu of confiscation or should have ordered re-export of the gold; that the penalty imposed is highly excessive.

4. Personal hearing, in virtual mode, was held on 22.12.2022. Sh. K. M. Suresh Chandran, Advocate appeared for the Applicant and reiterated the contents of the RA. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. At the outset, the Applicant has stated that the case has been decided on the basis of the letter dated 27.10.2015 wherein request for waiver of show cause notice was made. The Government observes that, in the instant case, the seizure was made on 27.10.2015 and the Applicant also issued letter dated 27.10.2015 for waiver, whereas the matter has been adjudicated by the original authority, vide Order dated 27.02.2016, i.e., almost 04 months after the date of seizure and the waiver letter dated 27.10.2015. It is observed that the Applicant was granted Personal Hearing on 18.01.2016, 02.02.2016 and 15.02.2016 but he did not appear before the original authority. The Applicant, therefore, had ample opportunity to withdraw the letter dated 27.10.2015

or to raise a grievance in this respect, which has not been done. Therefore, there is no merit in the subject contention.

6. On the merits, it is observed that the Applicant had concealed the offending goods inside the false top of the stroller suitcases carried by him. He had also not declared the offending goods in the Customs Declaration Form submitted by him. Even when asked orally, after being intercepted, the Applicant denied carrying any valuable goods other than the personal effects etc. This position has also been admitted by the Applicant in his statement recorded under Section 108 of the Customs Act, 1962. There is nothing on record that the statement has been retracted.

7. 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 carried by him, as stipulated under Section 77 of the Act, *ibid*. Further, the *modus-operandi* adopted makes the intention to smuggle manifest. No documents 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*.

8.1 The original authority has denied the release of seized goods on 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 that 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'.

8.2. 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 8 & 9 of the OIO. Hence, the Commissioner (Appeals) has correctly refused to interfere in the matter.

9.1 Other contention of the Applicant is that re-export of gold was not considered. The Government finds that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Customs Act, 1962, which reads as follows:

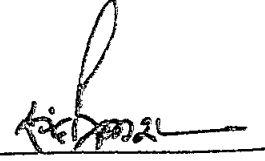
"Temporary detention of baggage. - Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the 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"

9.2 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 {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 made no declaration in respect of the subject goods. Further, the Hon'ble Delhi High Court has, in the case of Jasvir Kaur vs. UOI {2009 (241) ELT 521 (Del.)}, held that re-export "cannot be asked for as of right-----". The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to

re-export." 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 (a), is neither excessive nor harsh. In fact, the Government is of the opinion that the original authority has been rather lenient in the matter, specifically keeping in view the ingenious manner of concealment adopted by the Applicant herein.

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



(Sandeep Prakash)

Additional Secretary to the Government of India


Sh. Abdul Rahiman Hajee Ahmed,  
Bendichal House Thekkil,  
PO Kasargod District,  
Kerala-671541.

Order No. 400/22-Cus dated 23-12-2022

Copy to:

1. The Pr. Commissioner of Customs, Chennai-I, New Customs House, GST Road, Meenambakkam, Chennai-600 027.
2. The Commissioner of Customs (Appeals), 60, Rajaji Salai, Customs House, Chennai – 600 001.
3. Sh. K. M. Suresh Chandran, Advocate, 9/426 Court Road, Calicut – 673 001
4. PA to AS(RA)
5. Guard file.
6. Spare copy.
7. Notice board.

ATTESTED

  
अश्वनी कुमार लॉ / Ashwani Kumar Lau  
अधीक्षक / Superintendent (R.A. Unit)  
राजस्व विभाग / Department of Revenue  
वित्त मंत्रालय / Ministry of Finance  
Room No. 606, 6th Floor, B-Wing  
14, Hudco Vistara Building, New Delhi-110066