

SPEED POST



F. No. 380/114/B/2016-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...14/2/23

Order No. 50 /23-Cus dated 13.2.2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal C.Cus-I No. 590/2015 dated 30.09.2015, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Pr. Commissioner of Customs, Chennai-I

Respondent : Sh. Jabir Ahamed, Ramnad

ORDER

A Revision Application No. 380/114/B/2016-RA dated 30.06.2016 has been filed by the Pr. Commissioner of Customs, Chennai-I (hereinafter referred to as the Applicant department) against the Order-in-Appeal C.Cus-I No. 590/2015 dated 30.09.2015, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original dated 16.08.2015 (O.S No. 830/2015 - Batch B) passed by the Assistant Commissioner of Customs, Airport, Chennai in the case of Sh. Jabir Ahamed, Ramnad (hereinafter referred to as the Respondent).

2. Brief facts of the case are that the Respondent herein arrived, on 16.08.2015, at Anna International Airport, Chennai from Singapore. He was intercepted by the customs officers, when he tried to pass through Green Channel. After examination of his person/baggage, 01 gold chain, weighing 99 gms, valued at Rs. 2,31,255/- was recovered, which was kept concealed in his undergarment. The Respondent had not declared the said gold chain imported by him in his Customs Declaration Form. The original authority ordered for absolute confiscation of the seized gold chain under Sections 111(d), (e), (l), (m) and (o) of the Customs Act, 1962. A penalty of Rs. 25,000/- was also imposed, under Section 112(a) of the Act, ibid on the Respondent herein. On an appeal filed by the Respondent herein, the Commissioner (Appeals) upheld the confiscation but ordered redemption of the gold chain and allowed re-export on payment of fine of Rs. 70,000/-. Penalty imposed has been reduced to Rs. 15,000/-.

3. The revision application has been filed, mainly, on the grounds that the Respondent did not declare the said gold chain as required under Section 77 of the Customs Act, 1962; that he had stayed abroad only for 12 days and did not have the foreign currency for payment of duty; that hence the Respondent had not fulfilled the conditions stipulated under Notification no. 12/2012 and Baggage Rules; and that

appellate authority's order for redemption of the gold for re-export is not in order as per Section 80 of the Customs Act, 1962.

4. Personal hearing in the matter was granted on 27.08.2018, 17.09.2018, 26.09.2018, 21.11.2019, 05.12.2019, 11.01.2023, 30.01.2023 and 13.02.2023. In the personal hearing held, in virtual mode, on 13.02.2023, Sh. Anburaju, AC appeared for the Applicant department and reiterated the contents of the RA. He stated that, as per records, the gold has been disposed of. Vide letter dated 30.01.2023, Smt. Kamalamalar Palanikumar, Advocate of the Respondent has requested to pass an order with the available records as she was not able to attend the PH due to internet problem.

5.1 The Government has examined the matter carefully. It is observed that the issues of smuggling of gold and liability to confiscation as well as liability to imposition of penalty on the Respondent herein stand concluded with the order of Commissioner (Appeals) as the Respondent has not raised any grievance qua the said Order-in-Appeal. The only question that, therefore, is left for consideration is whether the order of Commissioner (Appeals) modifying the order of original authority for release of the goods on payment of redemption fine for re-export is sustainable or not.

5.2 The Government observes that the original authority had denied the release of seized goods on redemption fine under Section 125 of Customs Act, 1962. It is settled by the judgment of 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.)], that option to release 'prohibited goods' on redemption fine is discretionary. In the case of Raj Grow Impex (2021-TIOL-187-SC-CUS-LB), 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 "*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)], 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 holding so, the Hon'ble High Court has relied upon the judgment of Apex Court in the case of Mangalam Organics Ltd. {2017 (349) ELT 369 (SC)}. Thus, the Commissioner (Appeals) could have interfered with the discretion exercised by the original authority only if it would have been tainted by any of vices highlighted by the Hon'ble Courts. In the present case, the original authority has ordered for absolute confiscation as the gold was ingeniously concealed by the Respondent in his undergarment. Further, as per Commissioner (Appeals)'s own findings, the Respondent was a frequent traveller who had brought gold for commercial considerations. Therefore, keeping in view, the judicial pronouncements above and the facts of the case, it was incorrect of the Commissioner (Appeals) to interfere with the discretion exercised by the original authority.

5.3.1 Further, as far as re-export of offending goods is concerned, the Government observes 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:

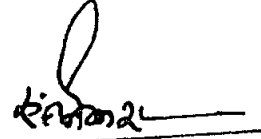
"Temporary detention of baggage.- Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the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

5.3.2 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, the Commissioner (Appeals) has recorded that the Respondent 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 {2019 (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."

5.3.3 Hence, the re-export of offending goods could not have been permitted.

6. In view of the above, the revision application is allowed. Consequently, Order-in-Original dated 16.08.2015 is restored.



(Sandeep Prakash)

Additional Secretary to the Government of India

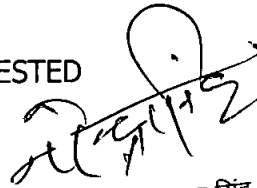
The Pr. Commissioner of Customs
Chennai-I Commissionerate, New Customs House
Meenambakkam, Chennai-600027

Order No. 50 /23-Cus dated 13.2.2023

Copy to:

1. Sh. Jabir Ahamed, S/o Shahul Hameed, 5/1 A Maraikayar ST., Thondi PO Ramnad District, Tamil Nadu-623409.
2. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001.
3. Smt. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai-600001.
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 मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 606, 6th Floor, B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066