

SPEED POST



F. No. 380/25/B/2017-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. 16.10.2023

Order No. 55/23-Cus dated 16-02-2023 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 AIRPORT. Cus.No. 80 & 81/2017 dated 24.04.2017, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Pr. Commissioner of Customs, Chennai-I

Respondents : Smt. Suguna Patam, Kadapa
Sh. Patam Venkateshwarlu, Kadapa

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ORDER

A Revision Application No. 380/25/B/2017-RA dated 19.07.2017 has been filed by the Pr. Commissioner of Customs, Chennai-I (hereinafter referred to as the Applicant department) against the Order-in-Appeal AIRPORT. C.Cus No. 80 & 81/2017 dated 24.04.2017, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 121/2016-17-AIRPORT & No. 122/2016-17-AIRPORT, both dated 27.10.2016, passed by the Additional Commissioner of Customs, Airport, Chennai in the case of Smt. Suguna Patam, Kadapa (hereinafter referred to as the Respondent-1) and Sh. Patam Venkateshwarlu, Kadapa (hereinafter referred to as the Respondent-2), respectively.

2. Brief facts of the case are that the Respondent-1 & Respondent-2 herein arrived, on 17.06.2016, at Anna International Terminal of Chennai Airport, from Kuwait. They were intercepted by the customs officers, at the exit of Customs Arrival Hall after having passed through the Customs Green Channel. Upon being questioned about the possession of dutiable/prohibitive goods, they replied in negative. They had also not filled in the Customs Declaration Form. After examination of their person, 04 gold bars were recovered from two bundles placed on either sides of the brassiere of Respondent-1 and 03 gold bars were recovered from pocket and wallet of Respondent-2. The government approved gold appraiser certified the 04 nos of gold bars recovered from Respondent-1 to be of 24 carat purity, totally weighing 400 gms and collectively valued at Rs. 12,48,800/- and 03 gold bars recovered from Respondent-2 of 24 carat purity, totally weighing 300 grams and collectively valued at Rs. 9,36,000/-. In their respective statements, recorded under Section 108 of the Customs Act, 1962, immediately after seizure, the Respondents stated that Respondent-1 was working as a janitor in a school whereas Respondent-2 was working as a driver-cum-watchman, in Kuwait; that they were not in possession of any legal/valid documents for the legal import of the gold or any foreign/Indian currency to pay customs duty; that they had bought the gold at Kuwait out of their savings and that they intended to carry it out

of the airport by concealment and by not declaring the same to the customs to sell it in India for monetary benefit. The original authority ordered for confiscation of the seized gold bars under Section 111(d) & 111(l) of the Customs Act, 1962. However, the gold bars were allowed to be redeemed for re-export on payment of redemption fine of Rs. 6,25,000/- on Respondent-1 and of Rs. 4,68,000/- on Respondent-2. Penalties of Rs. 1,00,000/- & Rs. 25,000/- were imposed on Respondent-1 herein under Section 112(a) & 114AA of the Act, *ibid*. Penalties of Rs. 80,000/- & Rs. 13,000/- were also imposed on Respondent-2 herein under Section 112(a) & 114AA of the Act, *ibid*. On appeals filed by the Applicant department herein, the Commissioner (Appeals) upheld the Orders-in-Original.

3. The revision application has been filed, mainly, on the grounds that both Respondent-1 and Respondent-2 had attempted to smuggle the gold by way of non-declaration and concealment knowing that they were not eligible to import gold and thus had a culpable mind; that they attempted to smuggle the gold into Indian without payment of duty and to circumvent the restrictions/prohibitions imposed on the import of gold; that both of them were not eligible passengers; that re-export of gold is specifically covered under Section 80 of the Customs Act, 1962; that as the Respondents had not made a declaration under Section 77, they were not eligible to re-export gold under Section 80; that gold was a 'prohibited item' as the conditions for import were not fulfilled and, hence, liable to absolute confiscation.

4. Personal hearing in the matter was granted on 21.11.2019, 11.01.2023, 30.01.2023 & 15.02.2023. In the personal hearing held, in virtual mode, on 15.02.2023, Sh. Anburaju, AC appeared for the department and reiterated the contents of the RA. He stated that the seized gold has been disposed of in the interim. No one appeared for the Respondents nor any request for adjournment has been received. Since sufficient opportunities have been granted to the Respondents, the matter is taken up for disposal based on records.

5. The Government has examined the matter carefully. It is observed that the issues of smuggling of gold and liability to confiscation as 'prohibited goods' as well as imposition of penalty stand concluded with the order of Commissioner (Appeals), as the Respondents herein have not challenged the same. The only question that, therefore, arises for consideration is whether the order of Commissioner (Appeals) upholding the order of original authority for release of offending gold on payment of redemption fine for re-export is sustainable or not.

6.1 The original authority has released the seized 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 Raj Grow Impex {2021 (377) ELT 145 (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 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 test for review of the discretion exercised by the original authority is that discretion should be exercised for relevant and reasonable considerations and exercise thereof should not suffer from any of the vices indicated in Raju Sharma (supra).

6.2 The Government observes that in both the cases, the original authority has exercised his discretion to extend the option of redemption on the grounds "*that the passenger has not resorted to any ingenious concealment of the gold bars and had*

also claimed the ownership of the gold and produced the purchase invoice during the seizure itself." However, the Government observes that these grounds narrated in para 12 of the respective Orders-in-Original are at total variance with the original authority's own findings recorded earlier in these Orders. In para 9 of the OIO No. 121/2016-17-Airport, relating to Respondent-1, it is recorded that *"I find that the passenger has concealed the gold bars of 24 carat purity in the brassiere to evade customs duty. I also note that she is not the owner of the goods."* Similarly in para 9 of the OIO No. 122/2016-17-Airport, relating to Respondent-2, the original authority has recorded that *"I find that the passenger has concealed the gold bars of 24 carat purity on his person to evade customs duty. I also note that he is not the owner of the goods."* Findings identical to those extracted above from para 9 of the relevant Orders-in-Original have also been recorded in para 6 of the respective Orders-in-Original. Thus, the Government finds that:

- i) The discretion has been exercised on the grounds which are in stark contradiction of the original authority's own findings.
- ii) Carrying of offending goods in undergarments cannot but be termed as ingenious concealment. In this light, the ground that the passenger had not resorted to any ingenious concealment is bereft of any reasons and, in fact, suffers from perversity.
- iii) The original authority has in para 9 of his orders held that the Respondents were not the owners of the offending gold but has allowed redemption, inter-alia, on the ground that the Respondents had claimed ownership and produced the purchase invoice. It is bewildering, to say the least, that having himself dismissed the claim of ownership, the original authority has proceeded to allow redemption on the self same ground of ownership. It is also noticed that the invoices produced are cash invoices and the Respondents have failed to place on record any evidence substantiating the claim of savings.

Thus, it is evident that the orders of original authority are self contradictory and perverse.

6.3 In view of the above, the Government holds that the order of Commissioner (Appeals) upholding the redemption of offending goods by the original authority cannot be sustained.

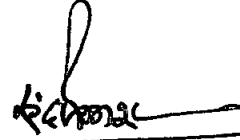
7.1 Further, as far as re-export of offending goods is concerned, the Government observes that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Customs Act, 1962, which reads as follows:

“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.”

7.2 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.)} that also involved smuggling of gold, 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 noted, the Respondents 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.”

7.3 Hence, the re-export of offending goods could also not have been permitted. The observations of Commissioner (Appeals), in para 10 of the impugned OIA, are contrary to the legal provisions and the judgments of Hon'ble High Courts, as brought out in paras 7.1 & 7.2 above.

8. In view of the above, the revision application is allowed and the offending goods are ordered to be confiscated absolutely. The orders of the authorities below are modified to this extent.



(Sandeep Prakash)

Additional Secretary to the Government of India

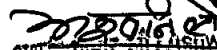
The Pr. Commissioner of Customs,
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Order No. 55/23-Cus dated 16-02-2023

Copy to:

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3. The Commissioner of Customs (Appeals-I), Chennai Airport & Chennai Air Cargo, 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED


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