

**SPEED POST**



F. No. 373/65/B/SZ/2020-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... 29/05/2024

Order No. 114/24-Cus dated 29/05/2024 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal C. Cus. I. No. 39/2020 dated 27.01.2020, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Mohamed Rizwan, Chennai

Respondent : The Principal Commissioner of Customs, Chennai-I

**ORDER**

Revision Application No. 373/65/B/SZ/2020-RA dated 24.02.2020 has been filed by Shri Mohamed Rizwan, Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal C. Cus. I. No. 39/2020 dated 27.01.2020, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original No. 194/2019-20-Commissionerate-I dated 25.09.2019, passed by the Assistant Commissioner of Customs (Adjudication-Air), Chennai-I, Chennai Airport and Air Cargo Complex, Chennai vide which gold foils weighing 240 grams, valued at Rs. 7,98,240/-, recovered from the Applicant, were confiscated absolutely under Section 111(d) and 111(l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 along with material objects used to conceal the impugned gold i.e. Panasonic operating instructions manuals, adhesive tapes under Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 80,000/- was also imposed on the Applicant under Section 112 of the Act, *ibid*.

2. Brief facts of the case are that, on 09.03.2019, the Applicant, an Indian passport holder, while arriving into India at Anna International Terminal of Chennai Airport, Meenambakkam, Chennai from Kuala Lumpur, was intercepted by Customs officers while he was about to exit the arrival hall after passing through green channel, on reasonable suspicion that he might be carrying gold/ contraband goods either in his baggage or on his person. Examination of Applicant's checked in baggage resulted in recovery of twelve numbers of "Panasonic" iron boxes and related operation instruction manuals. Closer examination of the manuals resulted in recovery of twelve numbers of gold foils which were pasted with adhesive tapes in between the manuals. The recovered twelve foils were certified to be of 24 carat purity, weighed 240 grams and were valued at Rs. 7,98,240/-. As the passenger attempted to smuggled the said gold by way of concealment and not declaring to Customs and was not in possession of any valid document for the legal import of impugned gold into India, the same alongwith material objects were seized under a Mahazar on 09.03.2019 under Section 110 of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992.

3. In his voluntary statement dated 09.03.2019 recorded under Section of 108 of the Customs Act, 1962 immediately after seizure of the impugned gold, the Applicant stated inter-alia that he pledged his jewels in India and got money and with that money he went to Kuala Lumpur and bought gold foils and concealed them in the Panasonic manuals to evade detection and Customs duty. The Applicant vide his letter dated 09.03.2019 requested for adjudication of the case without issue of show cause notice. The adjudicating authority adjudicated the matter vide aforesaid Order-in-Original No. 194/2019-20-Commissionerate-I dated 25.09.2019. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai, which has been rejected.

4. The revision application has been filed mainly on the grounds that the order of the lower adjudicating authority is against law, weight of evidence, circumstances and probabilities of the case; that the ownership of the goods is not disputed; that the appellant was all along in control of the officers at the red channel; and did not pass through or cross the Green Channel; that gold is a restricted item and not a prohibited good; that the adjudicating authority ought to have allowed redemption of the seized gold. The prayer is for the impugned Order-in-Appeal be set aside; that the impugned gold items be permitted for re-export/released and that the penalty be set aside/ reduced.

5. Personal hearing in the matter was fixed on 13.05.2024. Smt. P. Kamalamalar, Advocate appeared on behalf of the Applicant and reiterated the written submissions made in the Revision Application. Sh. S. Ramesh, Assistant Commissioner of Customs (Legal & Review), Chennai-I vide letter dated 13.05.2024 submitted that the Applicant did not declare the gold and tried to smuggle the impugned gold; he was intercepted at exit point on reasonable suspicion and it is prayed that the appeal filed by the Applicant be set aside.

6. The Government has examined the matter. It is observed that the Applicant did not declare the impugned gold which was concealed ingeniously and the same was recovered from him only after he was intercepted by the Customs. Thus the condition of Section 77

of the Customs Act, 1962 to declare the goods was not met. He admitted in his own statement recorded under Section 108 of the Custom Act, 1962 to the smuggling of the said gold, which bought by him from the money earned by pledging his jewels in India and that he carried the same for monetary benefit. Further, the contentions of the Applicant that he had not crossed the Green Channel and had verbally declared the gold articles in his possession to Customs etc., are not acceptable as the same had not been stated before the Customs authorities at the time of recording of his statement under Section 108 of the Customs Act, 1962, which has not been retracted. Further, he waived the requirement of a show cause notice which is on record. He also availed the opportunity of personal hearing and the appellate authority has clearly recorded with reasons why these contentions are untenable. The Government concurs with the findings of Commissioner (Appeals) in the O-I-A.

7. As per Section 123 of the Act, *ibid*, 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. Not only did the Applicant not declare the gold items, as stipulated under Section 77 of the Customs Act, 1962, but the same were ingeniously concealed inside the recovered Panasonic operating instructions manuals. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government agrees with the lower authorities that the seized gold items were liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant.

8.1 The Applicant has contended that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is against several judgements of the Hon'ble Supreme Court in which it has been held that the goods, import/export whereof is allowed subject to certain conditions, are to be treated as 'prohibited goods' in case such conditions are not fulfilled. In the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}*, the Apex Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition. Gold is not allowed to be imported freely in baggage and it is

permitted to be imported by a passenger subject to fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant in this case did not fulfil the conditions specified in this behalf. In the case of *M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155) ELT423(SC)}*, the Hon'ble Supreme Court has held that *"if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods"*. Further, in the case of *UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (2021-TIOL-187-SC-CUS-LB)*, the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia (supra) to hold that *"any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."*

8.2 In the case of *Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)]*, the Hon'ble Madras High Court (i.e the Hon'ble jurisdictional High Court) has summarized the position on the issue, specifically 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----."*

8.3 Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of *Kiran Juneja Vs. Union of India & Ors.* has held that *"A fortiori and in terms of the plain language and intent of Section 2(33), an import which is effected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods"*. Hence, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, *ibid.*

8.4 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

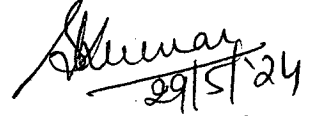
9. The Government observes that the original authority had denied the release of gold items on payment of redemption fine under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)], that the option to release 'prohibited goods' on redemption fine is discretionary. 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.*" Further, the Hon'ble Delhi High Court in its order dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that "*.....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudging Officer*". Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

10. The Applicant has requested to be allowed to re-export the offending goods. The Government observes that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Act, *ibid* and upon a plain reading of the same, 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 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 {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.*" Hence, the request for re-export cannot be allowed.

11. The case laws relied upon by the Applicant, in support of his various contentions, are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

12. In the facts and circumstances of the case, the penalty imposed by the original authority, as upheld by the Commissioner (Appeals), is neither harsh nor excessive.

13. The revision application is, accordingly, rejected.



(Shubhagata Kumar)

Additional Secretary to the Government of India

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S/o Shri Abdul Razack,  
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Order No. 114/24-Cus dated 29/5/2024

Copy to:

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2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED



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