

SPEED POST



F. No. 373/59/B/2020-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. 26/07/24.

Order No. 142 /24-Cus dated 26-07-2024 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 Application, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. HYD-CUS-000-APP-0040/19-20(APP-I) dated 31.10.2019, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicant : Sh. Mohammed Maqsood, Rampur

Respondent : Pr. Commissioner of Customs, Hyderabad

ORDER

A Revision Application, bearing No. 373/59/B/2020-RA dated 18.02.2020, has been filed by Sh. Mohammed Maqsood, Rampur (hereinafter referred to as the Applicant), against the Order-in-Appeal No. HYD-CUS-000-APP-0040/19-20(APP-I) dated 31.10.2019, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad, vide which the Commissioner (Appeals) has upheld the Order-in-Original No. 9/2019-Adjn.Cus(ADC) dated 14.02.2019, passed by the Additional Commissioner of Customs, RGI Airport, Hyderabad. Vide the aforementioned Order-in-Original, ten gold bars and three pieces of gold all of 24 carat purity, totally weighing 1224 grams and valued at Rs. 38,31,120/- recovered from the Applicant, had been absolutely confiscated under Section 111(d), 111(e), 111(i), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalty of Rs. 9,50,000/- was also imposed on the Applicant, under Section 112 (b)(i) of the Act, *ibid*.

2. Brief facts of the case are that the officers of Air Intelligence Unit (AIU), Hyderabad intercepted the Applicant, an Indian Passport holder, upon his arrival at Rajiv Gandhi International Airport, Hyderabad from Dubai, on 22.03.2018 after he passed the green channel. Upon being asked whether he was in possession of any dutiable or prohibited goods to which he replied in the negative. When he was asked to produce the 'Indian Customs Declaration Form' supposed to be filled in by him, he informed that he had not filled any declaration form. When asked if he had anything else to declare, he replied that he had nothing to declare. Upon the search of his person and baggage nothing incriminating was found. Upon persistent enquiry he confessed that he had concealed gold in the aircraft under seat no. 12A. Thereafter the officers escorted him to the aircraft and upon thorough search of the seat found two packets wrapped with brown adhesive tapes under seat no. 12A. The unwrapping of the brown adhesive tapes of the two packets resulted in the recovery of ten yellow metal bars and three yellow metal cut pieces concealed in the packets. The Government of India approved valuer examined and certified them to be of gold of 24 carat purity, totally weighing 1224 grams and valued at Rs. 38,31,120/-.

In his statement dated 22.03.2018, recorded under section 108 of the Customs Act, 1962, the applicant stated inter-alia that he had purchased ten gold bars and three cut pieces in

Dubai and one Kadeer Bhai directed him to take the flight AI 952 and place the gold under seat in the aircraft. This was supposed to be picked up by one Anwar Ali who was expected to board the flight at Hyderabad for Vizag. He had placed the gold under seat 12A and after reaching Hyderabad airport, he had informed Kadeer Bhai and Anwar Ali by calling from his mobile phone about the gold placed under seat no. 12A. For this job, he was to get Rs. 50,000/- from Kadeer Bhai; that he sat at seat no. 13D during the flight and gold was in his kurta pocket; that after landing at Hyderabad airport, the pax who was sitting at 12A got up and proceeded to the exit door to get down from the flight, whereupon he had got up from his seat 13D, occupied seat no. 12A, placed the gold under the seat, got out from the aircraft and proceeded towards immigration. He stated that he had bought his ticket with his money through one Gulbesh, a ticket agent of Muradabad, on payment of money; that the money for buying the gold was handed over to him at Antaliya Hotel, Dubai by one Abdullah who lived in Dubai; that the gold was purchased by him from M/s. Moti Jewellers situated in a locality called Deira in Dubai, that he had destroyed the invoice for the purchase of the same because he did not want to declare gold to the Custom authorities in India; that he did not know that Anwar Ali did not board the flight from Hyderabad to Visakhapatnam and he had no idea why; that he was only instructed by Kadeer to place the gold bars and pieces under seat no. 12A and leave the aircraft at Hyderabad; that Kadeer owns a mobile shop at Hazipura, Tanda, Rampur, Up and he is the main organizer of this gold smuggling; that he was only instructed to place the gold under seat no. 12A that was supposed to be picked up by Anwar Ali and he did not have any idea about the involvement of airlines personnel; and that he had not declared any goods to the Customs officials and passed through the green channel at the International Arrival Hall without declaring to the customs to evade payment of customs duty. He also confessed in his statement that on an earlier occasion, he was involved in smuggling of gold at Ahmedabad airport, wherein three passengers namely, Matloob, Rahat and Laik had come from Jeddah to Ahmedabad carrying a total one kg of 24 carat gold and he reached Ahmedabad airport by domestic flight from Mumbai and the same was handed over to him in the airport washroom; that later the gold was seized by the Ahmedabad Airport Customs; that he was not arrested in that case and he had paid Rs. 25000/- as penalty and that the gold was seized from him.

The matter was adjudicated by the original authority, vide aforesaid Order-in-Original dated 14.02.2019. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed mainly on the grounds that the statement of the applicant was not voluntary and he was forced to sign the statement; that import of gold is not prohibited; that redemption of gold should be allowed; that Section 112 of the Customs Act does not provide for a mandatory penalty; and that the applicant had brought gold for the first time and was not educated enough to understand the nuances of Customs Laws and procedures.

4. Personal hearings in the matter were fixed on 03.05.2024 & 10.05.2024. No one appeared for either side on the said dates. In the personal hearing held on 20.05.2024, Sh. Ramesh Babu, Advocate appeared for the applicant and submitted that the applicant brought the impugned gold in his trousers and that is where the gold was recovered from; that the allegation of having placed the gold under seat no. 12A of the aircraft by which he travelled is a fabricated one; that the statement given by him was not voluntary and that his signature was obtained by force; that the applicant was uneducated and could not understand English; that the person named in the allegation i.e. one Anwar, did not travel on the same flight; that there is no purchase invoice for the gold; that gold is not a prohibited item and therefore the applicant should have been given the option to redeem on payment of fine and penalty & that the facts in the revision application are reiterated. None appeared for the respondent department.

5. It is seen from the documents that the date of receipt of Order-in-Appeal is 10.11.2019 whereas the revision application has been filed on 18.02.2020. Thus there is a delay of 9 days in filing the revision application. The reason cited for delay is the ill health of the applicant at the time of receipt of Order-in-Appeal due to which he could not go and meet his advocate in Hyderabad. The delay is condoned.

6. The Government has carefully examined the matter. It is observed that the Applicant was intercepted after being identified by AIU officers after he had passed the

green channel. Ten gold bars and three pieces of gold were recovered from beneath the seat no. 12A as revealed by the Applicant. The sequence of events has been recorded in the Mahazar dated 22.03.2018 in the presence of two independent witnesses. Further, the Applicant himself has admitted to his role in the smuggling activity due to the lure of money vide his statement recorded under section 108 of the Customs Act, 1962. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction. Hence the contention of the applicant that his statement was not voluntary and he was forced to sign the statement is not tenable.

7. In terms of 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. In the present case, the Applicant has admitted to the *modus operandi* of hiding the gold beneath the aircraft seat which was intended to be removed later by another person. He ingeniously concealed the gold so that he did not have to declare the gold to the Customs authorities under Section 77 of the Customs Act, 1962 which seems to have been a pre-meditated plan. The Applicant has, thus, not only failed to discharge the burden placed on him, in terms of Section 123, *ibid*, the intention to smuggle on the part of Applicant is also clearly established.

8.1 The Government observes that import of gold and articles thereof in baggage is allowed subject to fulfillment of certain conditions. In the present case, the stipulated conditions have not been fulfilled by the Applicant. Hon'ble Supreme Court has repeatedly held 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 (i.e. the Hon'ble jurisdictional 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 import of gold in baggage. 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 assigned to it under Section 2(33) of the Act, *ibid*.

8.2 In view of the above, the contention of the Applicant that the impugned gold items are not 'prohibited goods', cannot be accepted.

9. The Government observes that the original authority had denied the release of seized 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 option to release 'prohibited goods' on redemption fine is discretionary. 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)], 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.*" Now in the latest judgment 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 and the facts of the case, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

10. SECTION 112 of the Customs Act, 1962 reads as under:-

Penalty for improper importation of goods, etc.-

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty¹ [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

As far as the contention of the Applicant that Section 112 does not provide for mandatory penalty is concerned, it is clear from the above that the word 'shall' is used which makes it abundantly clear that penalty is mandatory whenever the goods are rendered liable to confiscation under Section 111 of the Customs Act, 1962.

11. Another contention of the applicant is that the applicant had brought gold for the first time and was not educated enough to understand the nuances of Customs Laws and procedures. In this connection, it is observed that the original adjudicating authority has noted in paras 5 & 6 of his order, that a previous case of smuggling of gold was also

registered against the applicant at SVPI Airport, Ahmedabad. Thus he is a repeat offender. Further, ignorance of laws and procedure cannot be a ground to escape the clutches of law.

12. In the facts and circumstances of the case, the Government finds no infirmity in the order passed by the Commissioner (Appeals).

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

Shubhagata Kumar
26/7/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Mohammed Maqsood
S/o Sh. Jaji Abdul Ghafoor
House No. 42, Chak 12, Badli Tanda
Mohalla Yusuf, PO & Tehsil Tanda
Rampur, Uttar Pradesh-244925

Order No. 142/24-Cus dated 26-07-2024

Copy to:

1. Pr. Commissioner of Customs, GST Bhavan, L.B Stadium Road, Hyderabad-500004.
2. The Commissioner of Customs & Central Tax (Appeals-I), 7th Floor, GST Bhavan, L.B Stadium Road, Basheerbagh, Hyderabad-500004.
3. Sh. M. Ramesh Babu, Advocate, Opposite RGIA Police Station Ground, Kothwalguda Road, Post Shamshabad (Village & Mandal), Ranga Reddy District, Telangana-501218.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

Shailendra Kumar Meena
26/7/24
ATTESTED

(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi