

SPEED POST



F. No. 373/510/B/2019-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: 29/07/24

Order No. 148 /24-Cus dated 29-07-2024 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 Airport C.Cus.I No. 171/2019 dated 30.08.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Farook Ahamed, Chennai

Respondent : Pr. Commissioner of Customs, Chennai-I

ORDER

A Revision Application, bearing No. 373/510/B/2019-RA dated 22.11.2019, has been filed by Sh. Farook Ahamed, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal Airport C.Cus.I No. 171/2019 dated 30.08.2019 and its corrigendum dated 23.09.2019, passed by the Commissioner of Customs (Appeals-I), Chennai, vide which the Commissioner (Appeals) has modified the Order-in-Original No. 292/2018-19-Commissionerate-I dated 18.03.2019, passed by the Joint Commissioner of Customs (Adjudication-Air), Chennai by allowing redemption of confiscated 11 i-phones and 2 Black Berry Passport Mobiles on payment of redemption fine of Rs. 1,80,000/-. Vide the aforementioned Order-in-Original, three crude gold bits, Gudang Garam Cigarettes, i-phones and Black Berry Passport Mobiles, recovered from the Applicant together valued at Rs. 12,61,200/-, had been absolutely confiscated under Section 111(d) & 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 1,00,000/- was also imposed on the Applicant, under Section 112(a) of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant, an Indian passport holder, upon his arrival at Chennai Airport, from Dubai, on 04.10.2018 at the exit point of the arrival hall. He was questioned as to whether he was in possession of dutiable goods/gold/gold jewellery/commercial goods either in his baggage or on his person, to which he replied in the negative. He was once again asked before the commencement of the search of his person and his baggage as to whether he was in possession of gold/gold jewellery/commercial goods either in his baggage or on his person and if he has anything to declare to which he replied that he was having personal effects only and he was not carrying any gold or gold jewellery either in his baggage or on his person and that he had nothing to declare. Upon the search of his person, three gold cut bits were recovered from his pant pocket. During the examination of one of his bags, 2400 sticks of Gudang Garam cigarettes were recovered from his personal effects, the examination of other bag resulted in recovery of 11 i-phones along with accessories and 2 Blackberry Passport Mobile phones concealed inside Chivas Regal Whiskey Carton box, examination of two other carton boxes resulted in recovery of 5040 cigarettes.

Thus the following items were recovered from the applicant: -

S.No.	Item seized	Quantity	Total Value (in Rs.)
1	3 nos of crude gold cut bits of 24 carat purity	100 grams	321500
2	Gudang Garam Cigarettes	7440 sticks	74400
3	i-phone along with accessories	11 nos	848100
4	Black Berry Passport Mobiles	2 nos	17200
Total			1261200

Thereafter the Government of India approved Gold Appraiser examined the three yellow colour metal bits and certified them to be of gold of 24 carat purity, totally weighing 100 grams and valued at Rs. 3,21,500/-. In his statement immediately after the seizure, recorded under Section 108 of the Customs Act, 1962, the applicant stated inter-alia that he is a frequent traveller to Dubai; that he carries textile goods from Chennai and sells them in Dubai for profit; that upon return he brings electronic goods to sell in India and by doing so he earns Rs. 20,000/-; and that he intended to smuggle the said items by concealment and non-declaration to Customs in order to evade Customs duty. The matter was adjudicated by the original authority, vide aforesaid Order-in-Original dated 18.03.2019. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), who upheld the absolute confiscation of the gold and cigarettes but allowed redemption of 11 i-phones and 2 Black Berry Passport Mobiles on payment of redemption fine of Rs. 1,80,000/-.

3. The revision application has been filed mainly on the grounds that no declaration card was provided to him by customs authorities and he verbally declared the gold for family use; that he was not told about the provisions of Section 102 of the Customs act; that his statement was not voluntary but under compulsion; that he was all along under the control of the officers of Customs and was at the red channel; that gold is not a prohibited item; that re-export or release of the gold may be permitted; and that personal penalty imposed upon him be set aside or reduced.

4. Personal hearing in the matter was held on 10.04.2024. Ms. P. Kamalamalar, Advocate appeared for the applicant and submitted that the applicant brought electronic goods, cigarettes and cut gold bits weighing 100 grams; that Commissioner (Appeals) has allowed other goods (except cigarettes) to be redeemed upon payment of duty, fine & penalty but absolutely confiscated the cut gold bits which is unfair. She prayed that the impugned gold be released against redemption fine and penalty. No one appeared for the side of Respondents. Another personal hearing was fixed on 22.04.2024 but no one appeared from the respondent department. Since sufficient opportunities have been provided, the matter is being taken up for disposal.

5. The Government has carefully examined the matter. It is observed from the order of original authority that the applicant replied in the negative when asked about the possession of dutiable goods/gold/gold jewellery/commercial goods even after repeated questioning. Further, the applicant has himself admitted in his statement that he intended to smuggle the said items by concealment and non-declaration to Customs in order to evade customs duty. 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. Therefore, there is no doubt that the statement tendered was voluntary and his contention that he orally declared that he brought the gold for family use hold no ground.

6. The Government observes that the impugned items were recovered from the Applicant only when he was intercepted by Customs as he did not declare the same to Customs. Moreover, he has himself stated that these items were brought into India in a concealed manner and in order to evade Customs duty. He has not retracted his statement. Hence, the contention of the Applicant that he was all along under the control of the officers and was at the Red Channel is not sustainable.

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 items, as stipulated under Section 77 of the Act, *ibid*. No documents evidencing ownership and licit purchase were produced at the time of interception. 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 is in agreement with the lower authorities that the seized gold items were liable to confiscation under Section 111 *ibid* and, consequently, the Applicant is liable to penalty.

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 herein. 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. 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 Further, the offending goods have been imported in violation of Foreign Trade (Exemption for application of Rules in certain cases) Order, 1993 read with para 2.26 of Chapter 2 of the Foreign Trade Policy 2015-20, as these provisions allow import of only bonafide household goods and personal effects as part of the passenger baggage as per the limits, terms and conditions thereof prescribed in the Baggage Amendment Rules, 2014. Moreover, compliance to DGFT notification no. 108 (RE-2008) 2004-09 dated 05.06.2004 and the Ministry of Health and Family Welfare notification no. GSR 182(E) dated 15.03.2008 is mandatory. Also, the provisions of Cigarettes and other Tobacco

Products (Packaging and Labelling) Rules, 2008 require that every package of cigarette or any other tobacco product shall have the specified health warning in the manner specified in the Schedule to the Rules. As the offending goods are foreign origin cigarettes which have been imported in contravention of the conditions/statutory requirements subject to which they could have been legally imported, these have, thus 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)}].

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

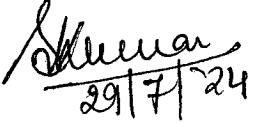
9. The Government observes that the original authority had denied the release of seized gold items on payment of redemption fine under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, 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."* 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. 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. On a plain reading, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export in terms of Section

80 ibid. 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. In this case, the Applicant had made no written 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 option of re-export also cannot be given.

11. In view of the facts of the case the penalty imposed is just and fair.

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


29/7/24

(Shubhagata Kumar)

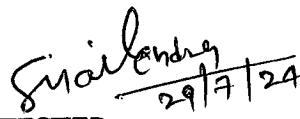
Additional Secretary to the Government of India

Sh. Farook Ahamed
S/o Sh. Ahamed
No. 28, Velayudam Street
Harbour, Chennai-600001.

Order No. 148/24-Cus dated 29-07-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3rd floor, New Custom House, GST Road, Meenambakkam, Chennai – 600016
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, 2nd Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board


29/7/24
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
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