

**SPEED POST**



F. No. 373/29/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. 08/08/24.

Order No. 157/24-Cus dated 08-08-2024 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 13/2020 dated 16.01.2020 passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Shri Thameemull Haq, Chennai

Respondent : Pr. Commissioner of Customs, Airport & Air Cargo Complex, Bengaluru.

**ORDER**

A Revision Application, bearing No. 373/29/B/SZ/2020-RA dated 24.01.2020, has been filed by Shri Thameemull Haq, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal 13/2020 dated 16.01.2020, passed by the Commissioner of Customs (Appeals), Bengaluru.

2. Brief facts of the case are that the Applicant, an Indian passport holder, arrived from Dubai at the international arrival hall in Bengaluru International Airport, on 06.07.2018, and was intercepted by the officers of Air Intelligence Officers of Customs, Bengaluru at the Customs arrival hall, after passing through the red channel door frame metal detector (DFMD) and had no Customs declaration form. The Applicant on enquiry stated that he had one grey coloured handbag marked 'Vicolle' and one carton box as his checked-in bag. His baggage contained used clothes and personal effects along with 18 gold bangles and one gold chain weighing 1037.190 grams. The Applicant was in possession of invoices for the gold bangles and the gold chain indicating that they were bought in Dubai. The said gold jewellery weighed 1037.190 grams of 24 carat purity valued at Rs. 32,63,000/- was seized under mahazar dated 06.07.2018.

3. The original authority i.e. the Additional Commissioner of Customs, Kempegowda International Airport, Bengaluru vide Order-in-Original No. 108/2019-20 (AP-ADM) dated 29.10.2019 ordered absolute confiscation of the smuggled gold under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 and imposed penalties of Rs. 8,25,000/- each under Section 112 and Section 114AA of the Act, *ibid*.

4. Aggrieved, the Applicant filed appeal before the Commissioner of Customs (Appeals), Bengaluru who upheld the order of absolute confiscation of the impugned gold, modified to the extent of reduction of penalty to Rs. 6,00,000/- under Section 112(a) and Rs. 3,00,000/- under Section 114AA of the Customs Act, 1962. Aggrieved by this order, the Applicant filed this appeal.

5. The instant 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; ownership of the gold is not disputed and that there is no ingenious concealment; that gold is a restricted item and not a prohibited good; option ought to have been given for the release of impugned gold under Section 125 of the Customs Act, 1962 on payment of redemption fine. The prayer is for the impugned Order-in-Appeal be set aside; that the impugned gold items be permitted for re-export/released and also set aside or reduce the personal penalty sum of Rs. 6,00,000/- and Rs. 3,00,000/- under Section 112(a) and 114AA of the Customs Act, 1962.

6. Personal hearings in the matter were fixed on 26.04.2024, 07.05.2024 and 15.05.2024. But, none appeared either from Applicant's or from the Respondents' side and no request for adjournment has been made. Therefore, the matter is taken up for decision based on the available records.

7. The Government has examined the matter. It is observed that the Applicant was not an eligible passenger for import of impugned gold in terms of notification No. 50/2017-Cus dated 30.06.2017. He had not stayed abroad for a period of six months and also did not possess the required foreign currency to discharge his duty liability. Further, he possessed more than one kilogram of gold which was prohibited under FTP, 2015-20. Further, the Applicant did not declare the possession of impugned gold in his Customs declaration form thereby contravening the requirement of Section 77 of the Customs Act, 1962 read with Baggage Rules, 2016. Therefore, the impugned gold does not constitute bonafide baggage and the acts of the Applicant have rendered the gold liable for confiscation under Sections 111(d), (i), (l) and (m) of the Customs Act besides making him liable for penalty under Section 112 and 114AA of the Act, *ibid*. The Government concurs with the lower authorities that the impugned 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 is 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 herein had not fulfilled 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.

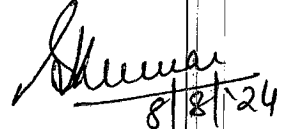
9. The Government observes that the original authority had denied the release of gold items on payment of redemption fine, under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, 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 impugned gold. 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. In view of the facts and circumstances of the case, there is no ground to interfere with order of Commissioner (Appeals) regarding absolute confiscation of impugned gold. As regard penalties imposed on the Applicant under Sections 112(a) and 114AA, the appellate authority has already considered and reduced the same, which appears to be just and fair.

12. The revision application is rejected for the reasons aforesaid.



(Shubhagata Kumar)

Additional Secretary to the Government of India

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Order No. 157 /24-Cus dated 08-08-2024

Copy to:

1. The Commissioner of Customs (Appeals), BMTC Building, Above BMTC Bus Stand, Old Airport Road, Domlur, Bengaluru-560071.
2. The Pr. Commissioner of Customs, Airport & Air Cargo Complex, Air India SATS, Air Freight Terminal, Kempegowda, Bengaluru-560300.
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai-600001.
4. PA to AS(RA)
5. Guard File

~~1. Spare copy~~

6. Spare Copy
7. Notice Board.

*Shailendra*  
8/8/24  
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

