

SPEED POST



F. No. 373/73/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.. 30/08/24 :

Order No. 177 /24-Cus dated 30-08-2024 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 No. HYD-CUS-000-APP-043-19-20 (APP-I) dated 31.10.2019, passed by the Commissioner of Customs & Central Tax (Appeals), Hyderabad.

Applicant : Sh. Mohammed Ghousuddin, Warangal

Respondent : Pr. Commissioner of Customs, Hyderabad

ORDER

A Revision Application, bearing No. 373/73/B/2020-RA dated 05.03.2020, has been filed by Sh. Mohammed Ghousuddin, Warangal (hereinafter referred to as the Applicant), against the Order-in-Appeal No. HYD-CUS-000-APP-043-19-20 (APP-1) dated 31.10.2019, passed by the Commissioner of Customs & Central Tax (Appeals), Hyderabad, vide which the Commissioner (Appeals) has upheld the Order-in-Original No. 37/2019 dated 12.05.2019, passed by the Assistant Commissioner of Customs, RGI Airport, Hyderabad. Vide the aforementioned Order-in-Original, three gold bars of 24 carat purity, totally weighing 300.000 grams and valued at Rs. 9,99,000/- recovered from the Applicant, had been absolutely confiscated under Section 111(i), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalty of Rs. 1,00,000/- was also imposed on the Applicant, under Section 112 (a)(i) of the Act, *ibid*.

2. Brief facts of the case are that the applicant, an Indian passport holder, had arrived at Rajiv Gandhi International Airport (RGIA), Hyderabad from Jeddah on 16.03.2019. His check-in baggage i.e. one trolley bag & one carton box came to RGIA on 17.03.2019 by Air India Flight No. AI 966 directly from Jeddah which was lying with the airlines at Air India missed Baggage Counter. He came to RGIA to collect the said luggage and was intercepted by the officers of Air Intelligence Unit (AIU), Hyderabad after he passed through the Green Channel. Upon being asked whether he was in possession of any dutiable or prohibited goods, he replied in the negative. Dark images were noticed when his trolley bag was scanned. Upon examination of the said bag one Central Processing Unit (CPU) was found. When the CPU was opened, three metal bars wrapped with silver coloured paper, carbon paper & transparent plastic covers, were found. When the wrapped materials were opened one by one, the officers found three yellow metal bars. The Government approved gold valuer examined and certified the said metal bars to be of gold of 24 carat purity, totally weighing 300 grams and totally valued at Rs. 9,99,000/-.

In his statement dated 17.03.2019, recorded under section 108 of the Customs Act, 1962, the applicant stated inter-alia that the gold bars were purchased from his savings for making gold ornaments for his wife & daughter; and that he did not declare the above

said gold bars to the Customs Authorities as he did not want to pay customs duty and tried to exit through the green channel. The matter was adjudicated by the original authority, vide aforesaid Order-in-Original dated 12.05.2019. 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 charges were not informed to the applicant; that his statement was not voluntary; that gold was purchased by the applicant himself along with proof of invoice; that the applicant did not declare the gold as he was under the bonafide belief that he can carry the gold in non commercial quantities without declaring to any authority; that the gold was kept in CPU so as to utilize space and avoid extra baggage charges charged by airlines; that gold is not a prohibited item; and that the redemption of gold should be allowed. It is prayed that the order of appellate authority be set aside, redemption be allowed with minimum redemption fine and penalty be set aside or reduced.

4. Personal hearings in the matter were fixed on 22.05.2024 and again on 10.06.2024 which were postponed to 07.08.2024 on the request of advocate of the applicant. In the hearing held on 07.08.2024, the applicant along with Sh. MD. Shabaz, advocate for the applicant appeared and submitted that the applicant worked in Jeddah and earned Rs. 1.6 lakhs a month; that bank statement for source of funds for procurement of the gold and the purchase invoice along with translation was produced before the adjudicating authority at the time of the OIO. He submitted that the gold was placed inside the CPU as a space saving measure and was not concealment. He prayed for the goods to be released upon redemption fine etc. as gold is not a prohibited item and quoted the order of Revisionary Authority [2019(369) ELT 1677 (GOI)]. No one appeared for the respondent. Hence, it is presumed that the respondent has nothing to add in the matter.

5. There is a delay of 24 days in filing the revision application. The reason for the delay is cited as the applicant was stationed at Jeddah and the advocate was residing at Hyderabad and most of the time was consumed for finalizing the brief for appeal and signature of appeal papers through courier services. The delay is condoned.

6. The Government has examined the matter. It is observed that the Applicant did not declare the gold voluntarily and was intercepted passing through the green channel. The impugned gold was ingeniously concealed inside a CPU wrapped in multiple layers of different materials. The contention that the gold bars were placed inside the CPU as a space saving measure is far fetched as three gold bars would not occupy much space. As far as the contention that the changes were not explained to him and the statement was not voluntary is concerned, it is noted that the sequence of events has been recorded in the Panchanama dated 17.03.2019 in the presence of two independent witnesses. The Applicant himself has admitted to smuggling vide his statement recorded under section 108 of the Customs Act, 1962, as he did not wish to pay the Customs duty. 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. In view of the facts of the case it has to be held that the concealment and non-declaration to Customs was done with a clear intent to evade detection and payment of duty.

7. As far as the photocopies of two invoices submitted as proof of purchase are concerned, it is noted by the appellate authority in para 13 of his order that in the Panchanama the applicant had stated that he purchased 300 grams of gold bars from his savings on 13.03.2019 from a gold shop named Alamel, Jeddah, but out of the two invoices, only one invoice was issued by Alamel while the other one was issued by Fadel Ali Al Hashedy. Further there are two transcripts of invoices issued by Fadel Ali Al Hashedy bearing dates 8.9.76 and 8.9.1436. Due to these discrepancies, the photocopies of invoices submitted by the applicant do not appear to be authentic or genuine. Moreover, another contention of the applicant that he did not declare the gold as he was under the bonafide belief that he can carry the gold in non commercial quantities without declaring the authority also cannot be accepted, as ignorance of law cannot be made an excuse to escape from the consequences of violating the law. Hon'ble Allahabad High Court in VEE EXCEL DRUGS & PHARMACEUTICALS PVT. LTD. Vs. Union of India [2014 (305) E.L.T. 100

(All.) held that "*It also cannot be doubted that ignorance of law is no excuse to follow something which is required to be done by law in a particular manner*".

8. 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. Further the gold was ingeniously concealed i.e. inside the CPU. Hence, the intent to smuggle is obvious. 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, he is liable to penalty.

9.1 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.*

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

10. 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.

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 Government finds no infirmity in the order passed by the Commissioner (Appeals).

13. In view of the above, the revision application is rejected and the Order-in-Appeal is upheld.

Shubhagata Kumar
30/8/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Mohammed Ghousuddin
S/o Sh. Yakub Ali
H.No. 11-20-110/4, Shanthi Nagar
L B Nagar, Warangal, Telangana-506002.

Order No. 177/24-Cus dated 30-08-2024

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. Shaik Aleem Shaik Akthar, Advocate, H. No. 17-2-1202/A/18, Wahed Colony, Rein Bazar, Hyderabad-500023.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

Shailendra Kumar Meena
30/8/24
ATTESTED

(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
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