

**SPEED POST**



F. No. 373/60/B/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..02/09/24...

Order No. 178 /24-Cus dated 02-09-2024 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-000-047-19-20 dated 13.11.2019, passed by the Commissioner of Customs & Central Tax (Appeals), Hyderabad.

Applicant : Smt. Hira Mohammed Osman Abashar, Khartoum

Respondent : Pr. Commissioner of Customs, Hyderabad

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**ORDER**

A Revision Application, bearing No. 373/60/B/2020-RA dated 18.02.2020, has been filed by Smt. Hiraa Mohammed Osman Abashar, Khartoum (hereinafter referred to as the Applicant), against the Order-in-Appeal No. HYD-CUS-000-047-19-20 dated 13.11.2019, passed by the Commissioner of Customs & Central Tax (Appeals), Hyderabad, vide which the Commissioner (Appeals) has upheld the Order-in-Original No. 54/2019 dated 16.07.2019, passed by the Assistant Commissioner of Customs, RGI Airport, Hyderabad. Vide the aforementioned Order-in-Original, five gold bars of 24 carat purity, totally weighing 193.700 grams and valued at Rs. 6,58,580/- recovered from the Applicant, had been absolutely confiscated under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalty of Rs. 66,000/- was also imposed on the Applicant, under Section 112 (a)(i) of the Act, *ibid*.

2. Brief facts of the case are that the officers of Air Intelligence Unit (AIU), Hyderabad intercepted the Applicant, a Sudanese Passport holder, upon her arrival at Rajiv Gandhi International Airport, Hyderabad from Dubai, on 08.07.2019 at the exit gate of the International Arrival Hall. Upon being asked whether she was in possession of any dutiable or prohibited goods, she replied in the negative. When she was asked to produce the 'Indian Customs Declaration Form' supposed to be filled in by her, she informed that she had not filled any declaration form. Upon the search of her baggage nothing incriminating was found. However, when she was made to pass through the Door Frame Metal Detector (DFMD) a beep sound was noticed. Thereafter Upon the search of her person pieces of yellow metal bars wrapped with black plastic tape were found concealed inside her inner garments. The Government approved gold valuer examined and certified the aforesaid pieces of yellow metal bars to be of gold as mentioned in above para.

In her statement dated 08.07.2019, recorded under section 108 of the Customs Act, 1962, the applicant stated inter-alia that she visited India on 14.03.2019, 01.07.2019 and 08.07.2019 in the last three months; that due to the meager salary she was earning in her job, she started her own business with the financial help from her father; that she came in contact with a business woman from Sudan who is in the business of selling saris bought from Hyderabad and footwear from Mumbai; that looking at the volatility in the value of

US dollar, this time she carried gold bars she accumulated from her business; that she hid the gold bars in the undergarments to hoodwink the Customs; and that this was her first violation of the law and had she known about the consequences, she would not have brought the gold bars/pieces.

The matter was adjudicated by the original authority, vide aforesaid Order-in-Original dated 16.07.2019. 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 gold was not concealed on the applicant's body but she was wearing it on her hands; that import of gold is not prohibited; that redemption of gold should be allowed; that she was not aware of the Customs procedures; and that Section 112 of the Customs Act does not provide for a mandatory penalty. It is further prayed that the impugned gold be permitted for re-export or released on imposition of nominal fine and penalty.

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 who brought the impugned gold was not aware of the rules and regulations in this regard; that she had hidden the gold in her innerwear for safety purposes only; that gold is not a prohibited item but a restricted one; and that it ought to have been released upon redemption fine and not confiscated absolutely. He reiterated the grounds of the RA and prayed for lenient view. None appeared for the respondent department.

5. The Government has examined the matter. It is observed that the Applicant was intercepted at the exit gate of the international arrival hall and five concealed gold bars were recovered from her when search was conducted. Even during the personal hearing it was admitted that the gold was hidden in the applicant's innerwear, therefore the contention in the RA that the gold was worn on her hands and not concealed is untenable. The sequence of events has been recorded in the Panchanama dated 08.07.2019 in the presence of two independent witnesses. The Applicant herself has also admitted to her role in the smuggling activity due to the lure of money vide her 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. Moreover, during the personal hearing it was stated that gold was hidden in the applicant's innerwear for safety purpose. Hence the contention of the applicant that gold was not concealed on her body is not tenable.

6. 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 her innerwear. Hence, the intent to smuggle is obvious. The Applicant has, thus, failed to discharge the burden placed on her, 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 her 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, she is liable to penalty.

7.1 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*.

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

8. 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.

9. 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 penalty<sup>1</sup> [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.

10. Another contention of the applicant is that the applicant did not know the Customs Laws and procedures. The applicant herself had admitted in her statement that she is a graduate and had come to India on two previous occasions also. Hence the contention of the applicant that she had no knowledge about the Customs procedures seems far-fetched

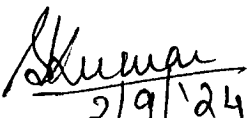
and untenable. Secondly, ignorance of laws and procedure cannot be a ground to escape the clutches of law. Hon'ble Allahabad High Court in Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. Vs. Union of India [ 2014 (305) E.L.T. 100 (All.) held that "*It also cannot be doubted that ignorance of law is no excuse to follow something which is required to be done by law in a particular manner*".

11. 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.

12. 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.

13. In view of the facts and circumstances of the case, the penalty imposed is neither harsh nor excessive.

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

  
2/9/24  
(Shubhagata Kumar)

Additional Secretary to the Government of India

Smt. Hira mohammed Osman Abashar  
D/o. sh. Mohammed Osman Abashar  
R/o Khartoum, Sudan  
(Through advocate)

Order No. 178/24-Cus dated 02-08-2024

Copy to:

1. Pr. Commissioner of Customs, GST Bhavan, L.B Stadium Road, Hyderabad-500004.
2. The Commissioner of Customs & Central Tax (Appeals-I), 7<sup>th</sup> 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.

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