

SPEED POST



F. No. 373/22/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.. 19/9/23

Order No. 218 /23-Cus dated 19.09.2023 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. TCP-CUS-000-APP-089-18 dated 16.05.2018, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. Mohamed Farsan, Colombo

Respondent : The Commissioner of Customs (P), Tiruchirappalli

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ORDER

A Revision Application, bearing No. 373/22/B/2019-RA dated 04.10.2018, has been filed by Sh. Mohamed Farsan, Colombo (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-089-18 dated 16.05.2018, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, whereby the Commissioner (Appeals) has upheld the Order-in-Original No. 187/2017 dated 15.09.2017, passed by the Assistant Commissioner of Customs (Airport), Tiruchirappalli. Vide the aforementioned Order-in-Original, one gold chain, weighing 53.2 grams and valued at Rs. 1,43,544/-, recovered from the Applicant, had been absolutely confiscated, under Section 111(d), 111(l), 111(m) & 111(o) of the Customs Act, 1962. Besides, penalty of Rs. 15,000/- 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 who had arrived at Tiruchirappalli Airport, from Colombo, on 27.08.2017. The aforementioned gold chain was recovered from the Applicant. The Applicant, in his statement dated 15.09.2017, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that the said gold chain was brought in India for monetary gain; that he did not have any bill/invoice for the purchase of the gold chain; that he did not fill the Customs Declaration Form and not declared the goods and value to the Customs because he intended to clear the same without payment of Customs Duty. The matter was adjudicated vide the aforementioned Order-in-Original dated 15.09.2017, the gold chain was absolutely confiscated and penalty imposed. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed mainly on the grounds that there was no concealment and the gold chain was worn by the Applicant; that the Applicant is a Sri Lankan National and under Rule 7 of the Baggage Rules, 1998 a tourist is allowed duty-free clearance of articles which are for the personal use of the tourist; that import of gold is not prohibited; and that the original authority did not exercise the discretion conferred under Section 125 of the Customs Act, 1962.

4. Personal hearings in the matter were fixed on 14.08.2023 & 28.08.2023. Sh. V, Narayanaswamy, Advocate appeared on behalf of the Applicant and stated that this is a case where the personal effects of a foreign national, who does not know English and who is on tourist visa, has been seized and confiscated absolutely, without giving even an option for redemption fine and with imposition of penalty which is excessive in view of the circumstances. The appellate authority has not considered the submission made at the time of appeal, which he reiterated, and also sent written submissions via email, citing judgements of Kerala H.C in support of his case.

5. The Applicant has prayed for condonation of delay in his revision application. The instant revision application has been filed with a delay of 40 days. The reason cited for the delay is that the Applicant's visa expired and as such he went back to Colombo. He returned to India on 29.09.2018 after which he contacted his advocate and sought his assistance to file the revision application. In view of these facts, the delay is condoned in terms of Section 129DD of the Customs Act, 1962, as amended.

6. The Government has carefully examined the matter. It is observed that the Applicant did not declare the impugned gold chain as required under Section 77 of the Act, *ibid*, in respect thereof.

7. When goods are seized by an officer of customs under the reasonable belief that they are smuggled, then as per Section 123 of Customs Act 1962, the burden of proof that such goods are not smuggled is on the person from whom those goods are recovered. The Applicant did not do so. 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*. Therefore the Government agrees with the lower authorities that the seized gold item was liable for confiscation under Section 111 *ibid* and, consequently, penalty was imposable on the Applicant.

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, it is not even contended by the Applicant that these conditions were fulfilled by him. It is a settled position through several judgements of the Hon'ble Supreme Court 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 held to be 'prohibited goods'.

8.2 In view of the above, the contention of the Applicant that the offending gold item is not 'prohibited goods', cannot be accepted.


9. The Government observes that the original authority had denied the release of the seized gold item 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.*" Such a case is not made out, rather redemption has been sought merely on a legally erroneous ground of the subject goods not being 'prohibited goods'. 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. The Applicant has contended that the gold chain was worn on his person and there was no concealment or misdeclaration. In this connection, the Government observes that the Applicant vide his statement dated 15.09.2017 had admitted that he did not declare the impugned gold to customs; that he brought it for monetary benefit; and this statement has not been retracted. Hence, it is concluded that the contentions of the Applicant are nothing but an afterthought.

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

12. The revision application is, accordingly, rejected.


19/9/23

(Shubhagata Kumar)

Additional Secretary to the Government of India

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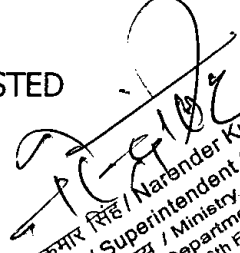
Order No. 218/23-Cus dated 19.09.2023

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), No.1, Williams Road, Cantonment, Trichy-620001.

2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Trichy-620001.
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4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED


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