

SPEED POST



F. No. 380/99/B/SZ/2018-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.....25/01/24

Order No. 25/24-Cus dated 25-01-2024 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 Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. HYD-CUS-000-APP-052-18-19 dated 28.08.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicant : The Principal Commissioner of Customs, Hyderabad

Respondent : Smt. Undrajavarapu Varshini, Kakinada

ORDER

A Revision Application No. 380/99/B/SZ/2018-RA dated 29.11.2018 has been filed by the Principal Commissioner of Customs, Hyderabad (hereinafter referred to as the Applicant department) against the Order-in-Appeal No. HYD-CUS-000-APP-052-18-19 dated 28.08.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad. The Commissioner (Appeals) had, vide the impugned Order-in-Appeal, modified the Order-in-Original No.36/2018-Adjn.Cus (ADC) dated 16.05.2018 passed by the Additional Commissioner of Customs, Hyderabad in the case of Smt. Undrajavarapu Varshini, Andhra Pradesh (hereinafter referred to as the Respondent) and allowed redemption of absolutely confiscated goods seized from the Respondent on payment of fine of Rs. 70,000/-. However, the penalty of Rs. 60,000/- imposed under Section 112(b)(i) on the Respondent was upheld.

2.1 Brief facts of the case are that the Respondent arrived on 23.08.2017 at Rajiv Gandhi International Airport, Hyderabad from Dubai. She was intercepted by the officers of Customs (Air Intelligence Unit), Hyderabad Customs Commissionerate, Hyderabad on a reasonable belief that she was carrying goods in violation of the provisions of the Customs Act, 1962. On search of the Respondent and her checked-in bags & hand bag, the officers found four gold bangles in her hand bag. She had not filed any declaration form with the customs authorities. The Government Registered Valuer, assayed that the four bangles are made of 24 karat gold with 99.5% purity, weighing 200 grams valued at Rs. 5,98,000/-. The impugned goods were seized by the officers of customs under panchanama dated 23.08.2017 on the reasonable belief that the said goods appeared to be smuggled by the above said Respondent and appeared to be liable for confiscation under Section 111 of the Customs Act, 1962.

2.2 On being questioned, the Respondent in her statement dated 23.08.2017, has stated inter-alia that the impugned gold bangles were given to her by her boss Shri Khaleel Pasha Mohammed in Kuwait to hand over them to his brother Shri Abdul Lateef at Hyderabad; that she intentionally did not declare the goods to evade customs duty; that she accepted the offence committed by her.

2.3 Thus, it appeared that the Respondent had contravened the provisions of Section 11 & Section 77 of the Customs Act, 1962 and provisions of Foreign Trade (Development & Regulation) Act, 1992 and thereby rendered the impugned goods liable for confiscation under Section 111 of the Customs Act, 1992. The Respondent, vide her letter dated 25.09.2017, has stated inter-alia that the bangles were brought for the marriage of her family members. Further, during the personal hearing held on 19.04.2018, Shri Y. Koteswara Rao, Advocate and Shri Md. Ahmed Pasha, GPA

holder of the Respondent stated that she had brought the gold for her own use and had bills for the same. The original adjudicating authority vide Order-in-Original No.36/2018-Adjn.Cus (ADC) dated 16.05.2018, after following the due process of adjudication, held that the Respondent claimed the ownership of the goods without producing appropriate documentary evidence and her claim was only an afterthought and accordingly the Respondent was just a carrier and not the owner of the goods in as much as the invoice bearing No. 34504 dated 22.08.2017 produced during the course of personal hearing was not in her name but in the name of her boss Shri Khaleel Pasha who had given her the bangles, as per her statement dated 23.08.2017 (para 22 of the Order-in-Original dated 16.05.2018). Further, the original adjudicating authority ordered absolute confiscation of said impugned goods under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 and also imposed penalty of Rs. 60,000/- on the Respondent under Section 112(b)(i) of the Act, *ibid*.

3. The revision application has been filed mainly on the grounds that the Respondent did not declare the said gold chain as required under Section 77 of the Customs Act, 1962; that the impugned goods were attempted to be smuggled by the passenger in contravention of the provisions of Section 11 & Section 77 of the Customs Act, 1962 and provisions of Foreign Trade (Development & Regulation) Act, 1992 and also prohibited in nature as held by the original authority as well as appellate authority; that the Respondent is not owner of the goods but is only a carrier. It has been prayed for correct determination as to whether the order of Commissioner (A) allowing the impugned goods to be released on payment of fine is legal and proper and whether the same be set aside and Order-in-Original be restored.

4. Personal hearings in the matter were granted on 11.08.2023, 08.09.2023, 22.11.2023 and 22.12.2023, but no one appeared either from Applicant's or from the Respondents' side and also no request for adjournment was received from either side. Therefore, the matter is taken up for decision based on the available records.

5. The Government has examined the matter. It is apparent that the Respondent did not declare the gold brought by her, as required under Section 77 of Customs Act, 1962, to the Customs Authorities at the airport. Further, it is on record that the Respondent is not owner of the goods but acted as a carrier at the behest of her boss which is borne out by the invoice being in his name and not the Respondent. The Respondent has admitted to the recovery of gold from her as well as to the fact of non-declaration in her statement, tendered under Section 108 of Customs Act, 1962. The issues of smuggling of gold, its liability to confiscation and it being 'prohibited goods' stand settled with the order of Commissioner (Appeals) as


the same has not been challenged by the Respondent by way of an appropriate revision application. The only question that, therefore, needs to be examined is whether the order of Commissioner (Appeals) releasing the goods on payment of redemption fine is sustainable.

6.1 The original adjudicating authority has denied the release of offending goods on redemption fine under Section 125 of Customs Act, 1962. The Government observes that, in terms of Section 125 of the Customs Act, 1962, the option to release 'prohibited goods', on redemption fine, is discretionary, as held by 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.)]. In the case of UOI vs. Raj Grow Impex LLP{2021(377)ELT 146 (SC)}, 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 Commissioner of Customs (Air), Chennai-I Vs P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, the Hon'ble Madras High Court has held that *"non-consideration or non-application of mind to the relevant factors, renders exercise of discretion manifestly erroneous and it causes for judicial interference."* Further, *"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)], relying upon the judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], 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"*.

6.2 In the present case, the original authority has ordered for absolute confiscation on the grounds that the seized gold constituted, 'prohibited goods'; that the Respondent failed to make the requisite declaration; and that the Applicant was attempting to smuggle gold by way of concealment. Moreover, when the Respondent was asked as to whether she was in possession of any dutiable or prohibited goods to which she replied in the negative. Thus, it is evident that the original authority has exercised his discretion for relevant and reasonable considerations and the order does not suffer from any perversity or patent illegality. As such, following the ratio of decisions cited supra, the order of Commissioner (A) to release the goods on payment of redemption fine is incorrect. Thus, the

Government holds that the order of Commissioner (Appeals) allowing redemption of confiscated gold cannot be sustained.

7. In view of the above, the impugned OIA dated 28.08.2018 is set aside and the OIO dated 16.05.2018 is restored. The revision application is allowed in above terms.


25/11/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

The Principal Commissioner of Customs,
GST Bhavan, L.B Stadium Road,
Basheerbagh, Hyderabad-500004.

Order No. 25/24-Cus dated 25-01-2024

Copy to:

1. The Commissioner of Customs & Central Tax (Appeals-I), 7th Floor, GST Bhavan, L.B Stadium Road, Basheerbagh, Hyderabad-500004
2. Smt. Undrajavarapu Varshini, D/o Shri Undrajavarapu Pullayya, H.No. 70-9-106/5, Godarigunta, Jayaprakashnagar, Kakinada-533003, Andhra Pradesh.
3. PPS to AS (RA).
4. Guard file.
5. Spare Copy
6. Notice Board


25/01/24
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