

**SPEED POST**



F. No. 373/132/B/2019-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.....20/10/23.

Order No. 250/23-Cus dated 20-10-2023 of the Government of India passed by Ms. 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. CAL-EXCUS-000-APP-1161-2018 dated 28.12.2018, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi.

Applicants : Sh. Hudaifa Chekintakath, Kasargod

Respondent: Commissioner of Customs (Prev.), Cochin.

\* \* \*

**ORDER**

A Revision Application No. 373/132/B/2019-RA dated 15.04.2019 has been filed by Sh. Hudaifa Chekintakath, Kasargod (hereinafter referred to as the 'Applicant'), against the Order-in-Appeal No. CAL-EXCUS-000-APP-1161-2018 dated 28.12.2018, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Kochi. The Commissioner (Appeals) vide the impugned Order-in-Appeal, has modified the Order-in-Original passed by the Joint Commissioner of Central Excise, Customs & Service Tax, Calicut, bearing O-I-O No. 15/2015-16 A dated 23.11.2015. Vide the aforementioned Order-in-Original, 4 pieces of gold rods weighing 1 Kg, valued at Rs.29,70,000/- recovered from the Applicant herein were confiscated alongwith the trolley bag used for concealment. Penalties of Rs. 3,00,000/- each were imposed on the applicant herein under Sections 112 & 114 AA of Customs Act,1962. Vide the impugned OIA, Commissioner (Appeals) has set aside the penalty imposed under Section 114 AA and upheld the rest of the order passed by the original authority.

2. Briefly stated, the applicant was intercepted at Calicut airport, on 14.01.2014, by Customs officers when he tried to go out of the exit gate through the green channel without reporting to Customs counter. On being asked as to whether he had any non-duty paid goods or gold, he replied in the negative. Thereafter, on examination of his baggage, 4 gold rods of 24 carat purity weighing 1 Kg. were found concealed under a metal strip inside the cloth lining of his trolley bag. The said gold bars were seized by the customs authorities under a mahazar. Applicant's statement was recorded in which, he stated that he was aware that the gold rods were concealed in the

trolley bag entrusted to him by one Sh. Haneefa; that he was aware of the duty liability and culpability of non –declaration/non-payment of duty on gold; that he had acted as a carrier for getting the promised remuneration of Rs.30,000/-.

3. The Revision Application has been filed, mainly, on the grounds that the Order-in-Original passed by the original authority is not a reasoned order; that the statement of the Applicant was not true and voluntary and the same should have been discarded; that the applicant was unaware of the concealment of gold inside the maroon trolley bag given by Sh. Haneefa ;that the gold is not prohibited for import and that the applicant should have been given the option to redeem the gold under Section 125 of the Customs Act, 1962.

4. Personal hearing in the matter was held on 23.08.2023, in virtual mode. Shri Mohammed Zahir, Advocate appeared for the Applicant and stated that his client was not aware of the concealment of 1 Kg of gold in his baggage and that his client got involved in this case since he merely carried a bag handed over to him to carry to India; that his client did not know that the bag had indigenous concealment of 1 Kg of gold; that the statements made/given by his client were not voluntary in nature , as evidenced by contradictory answers to questions put by the seizing authorities, though the statements were not retracted by the Applicant. In view of the obvious ingenious concealment, Sh. Zahir accepted that absolute confiscation has been done but prayed for reduction in penalty which is too high , especially in view of the confiscation of the gold.

5.1. The Government has carefully examined the matter. The Applicant has contended in the instant revision application that he was not aware of the ingenious concealment of gold in the trolley bag he was carrying. On this contention of the Applicant, the government observes that the Applicant was intercepted with 4 gold rods ingeniously concealed in his trolley bag when he ~~was exiting the airport, without making any declaration in respect thereof.~~ The seizure was made in the presence of independent witnesses, which corroborates the allegations made against the Applicant. The Applicant had, in his voluntary statement dated 04.01.2014 under section 108 of the Act *ibid* admitted that he intended to clear the gold without payment of Customs duty. It was further admitted in the very same statement by the Applicant he was aware of the fact that gold was ingeniously concealed in the trolley bag handed to him by Sh. Haneefa and he had agreed to take it to India on the promise of being paid Rs.30,000/-. Thus the Government holds that this contention of the Applicant is nothing but a bald assertion which is sans merit.

5.2. Another contention raised by the Applicant is that the statement tendered by him under Section 108 of the Act *ibid* was not true and voluntary. From the material placed on record, the Government observes that at no time between the interception of the Applicant with the offending goods to the adjudication of his case by the lower adjudicating authority, did the Applicant retract his statement dated 04.01.2014. Thus, the Government observes that the contention is nothing but an afterthought, hence, non-sustainable.

5.3. The Applicant has tried to assert that gold is not a prohibited item for import. On this assertion of the Applicant, 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 that these conditions were fulfilled by the Applicant herein. The issue is no longer res-integra in light of various judgments of 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 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'. In view of the above, the contention of the Applicant that the offending gold item is not 'prohibited goods', cannot be accepted.

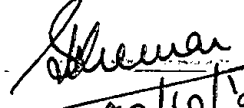
5.4. Lastly, the Applicant has contended that he should have been permitted to redeem the confiscated gold in terms of Section 125 of the Act, *ibid*. On this contention of the Applicant, the Government observes that the original authority had denied the release of seized gold items on payment of redemption fine, in terms of Section 125 of the Act, *ibid*. 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.* The 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'. It is also observed that the original authority has, after detailed consideration and for appropriate reasons recorded in paras 26 & 27 of his Order, refused redemption in respect of gold items. 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. Further, during the personal hearing held on 23.08.2023, the Applicant through his counsel has accepted the absolute confiscation.

6. The Applicant has prayed for reduction of penalty imposed under Section 112(a) & (b). The Government observes that LAA had imposed penalties of Rs.3,00,000/- each on the Applicant under Section 112 and Section 114 AA of the Act, *ibid*. In the appellate proceedings, Commissioner (Appeals) had set aside the penalty imposed under section 114AA. The Government also observes that the market value of the impugned gold was around thirty lakhs and the penalty imposed under Section 112 is also Rs.3,00,000/- i.e. 10% of the value. In the facts and circumstances of the

case, the quantum of penalty imposed is just and fair and no further reduction in it is warranted.

7. The revision application is, accordingly, rejected.

  
20/10/23  
(Shubhagata Kumar)

Additional Secretary to the Government of India

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Order No. 250 /23-Cus dated 20-10-2023

Copy to:

1. The Commissioner of Customs (P), 5<sup>th</sup> Floor, Catholic Centre, Broadway, Cochin-682031
2. The Commissioner (Appeals), C.R Building, I.S Press Road, Kochi-682018.
3. Shri Mohammed Zahir, Advocate, 3/57-A, Nendungadi Gardens, West Nadakkavu, Calicut, Kerala-673011.
4. PPS to AS(RA).
5. Guard File.
6. Spare copy
7. Notice Board.

  
ATTESTED

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