

SPEED POST



F. No. 373/183/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..24/11/23

Order No. 283/23-Cus dated 24-11-2023 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. HYD-CUS-000-APP-076-18-19 dated 21.12.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicants : Sh. Gosala Syambabu, Y.S.R District

Respondent : Pr. Commissioner of Customs, Hyderabad

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ORDER

A Revision Application No. 373/183/B/2019-RA dated 18.06.2019 has been filed by Sh. Gosala Syambabu, Y.S.R District (hereinafter referred to as the Applicant), against the Order-in-Appeal No. HYD-CUS-000-APP-076-18-19 dated 21.12.2018, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad. The Commissioner (Appeals) has upheld the Order-in-Original No. 52/2018-Adjn.Cus(ADC) dated 13.06.2018 passed by the Additional Commissioner of Customs except to the extent of reducing the penalty imposed upon the Applicant under Section 112(a)(i) of the Customs Act, 1962 to Rs. 4,00,000/-. Vide the aforementioned Order-in-Original three pieces of gold bars, totally weighing 1233 grams and totally valued at Rs. 36,86,670/-, recovered from the Applicant had been absolutely confiscated under Section 111(d), (i), (l) & (m) of the Act, *ibid.* Besides, a penalty of Rs. 9,00,000/- was also imposed upon the Applicant under Section 112(a)(i) of the Act, *ibid.*

2. Brief facts of the case are that the Applicant herein was intercepted by Customs officers after passing through the Green Channel upon his arrival at RGI Airport from Dubai to Hyderabad on 26.08.2017. Upon being enquired whether he was in possession of any dutiable or prohibited goods, he replied that he was not in possession of any dutiable or prohibited goods. Upon being asked to produce Customs Declaration Form, he replied that he was not in possession of any such form. Thereafter his baggage was subjected to screening upon which they noticed a suspicious object in one of the three bags. A search was conducted of that bag and it found to contain a brown colour carton box. On opening of that carton box some clothes and a small yellow colour box on which it was written as Neostar Voltage Converter 220V-110V was found. Since the weight of the box was found to be unusually heavy, the officers opened and broke open the inner portion of the Voltage Converter which resulted in the recovery of three yellow pieces of metal bars which were concealed by replacing the copper winding in the core part of the Voltage Converter. When questioned by the officers about the yellow pieces metal bars, the Applicant replied that one person named Mr. Prasad had given him the said carton box

which contained the said Voltage Converter box at Dubai International Airport and that his representative would collect the same at Hyderabad International Airport. The Approved Valuer appointed by Government of India assayed and certified the goods as 24 carat gold with 99.5% purity, totally weighing 1233 grams and valued at Rs. 36,86,670/-.

In his statement dated 26.08.2017, recorded under Section 108 of the Customs Act, 1962, the Applicant herein, inter-alia, stated that he was working as a labourer; that he had brought some of his personal clothing and a carton box given by a person namely Mr. Prasad at Dubai International Airport to be handed over to his person who would collect the same at Hyderabad International Airport; that Mr. Prasad is known to his agent who promised him employment at Dubai and did not know any other details except his number; that he had not declared any goods to the Customs officials as he was not carrying any dutiable goods as the carton box mentioned in the panchanama dated 26.08.2017 was given to him by Mr. Prasad and was not aware of the goods kept in it; and that he fully agreed with the contents of the panchanama dated 26.08.2017 and accepted the offence committed by him.

The original authority, vide aforesaid Order dated 13.06.2018, ordered for absolute confiscation of the 03 gold bars, under Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 and imposed penalty of Rs. 9,00,000/- under Section 112(b)(i) of the Act, *ibid*. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was partially allowed as above.

3. The revision application has been filed, mainly, on the grounds that import of gold is not prohibited and therefore, an option for redemption ought to have been given; and that the penalty imposed upon the Applicant is harsh and disproportionate which may be reduced.

4. Personal hearing in the matter were fixed on 16.10.2023, 03.11.2023 & 07.11.2023. No one appeared for either side on any of the dates, however, a written submission from the side of Applicant has been received in this office which has been taken on record. No one appeared for the department nor any request for adjournment

has been received. Hence, it is presumed that the department has nothing to add in the matter.

5. At the outset, the Government observes that the OIA impugned herein was received by the Applicant on 11.01.2019 whereas the RA has been filed on 18.06.2019. Therefore, the RA has been filed beyond the normal period of limitation of three months, as per sub-section (2) of Section 129DD *ibid*. A request for condonation of delay has been filed stating that the Applicant had fallen ill and was hospitalized from the end of January, 2019 and expired on 01.05.2019 and hence the delay was for reasons beyond control. The death certificate of Applicant has been attached. The delay is therefore condoned.

6. The Government has carefully examined the case. It is observed that the Applicant was intercepted after he had passed through the Green Channel. The Applicant admitted the recovery of gold items from him. Further, he has stated that he was not aware of the contents of the carton box given to him by one Mr. Prasad. The contention of the Applicant that import of gold is not prohibited does not support his statement that he was unaware of the contents of the carton box. No prudent person would justify the import of gold on one hand and state his oblivion of the gold on other hand. Moreover, the gold was found ingeniously concealed in the Voltage Converter by replacing the copper wiring in the core part of the Voltage Converter. Therefore the intent to evade duty and the concealment are beyond doubt.

7. 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. No document evidencing ownership and licit purchase have also been placed on record. The gold bars were concealed. Hence, the intention to smuggle is manifest. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Keeping in view the facts of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government holds that the lower authorities have correctly held the goods to be liable to confiscation under Section 111 of the Act, *ibid*.

8.1 The Applicant had contended before the lower authorities that the import of gold is not 'prohibited', which contention has been adopted in the revision application. However, the Government observes that this contention of the Applicant is in the teeth of law settled by a catena of judgments of Hon'ble Supreme Court. In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Apex Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term *"Any prohibition" means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition*". Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfillment of certain conditions. In the present case, it is not even contended that the Applicant herein had fulfilled the conditions specified in this behalf. In the case of M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155) ELT423(SC)}, the Hon'ble Supreme Court has held that *"if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods"*. Further, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia (supra) to hold that *"any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."*

8.2 In the case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court has summarized the position on the issue, specifically in respect of gold, as under:

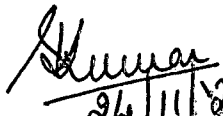
"64. Dictum of the Hon'ble Supreme Court and High Courts makes it clear that gold, may not be one of the enumerated goods, as prohibited goods, still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition "prohibited goods", in Section 2 (33) of the Customs Act, 1962----."

8.3 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

9. The original 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 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."* 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."* Such a case is not made out. Hence, the order of absolute confiscation could not have been interfered with.

10. Since the Applicant has passed away and the widow of the Applicant has moved this revision application, I take a lenient view and on sympathetic grounds I reduce the penalty imposed under Section 112(a)(i) from Rs. 4,00,000/- to Rs. 1,00,000/-.

11. The revision application is deposed of in above terms.


24/11/23
(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Gosala Syambabu
S/o Gosala Arjuna Rao
Chapala H W Village, Apparajupet Post
Pullampeta Mandal, Y.S.R District
Andhra Pradesh.

Order No. 283 /23-Cus dated 24-11-2023

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. Smt. Gosala Devi, W/o Sh. Gosala Syambabu, Chapala H W Village, Apparajupet (Post), Pullampeta Mandal, YU.S.R District, Andhra Pradesh.
4. PPS to AS(RA).
5. Guard File.
- ✓ 6. Spare Copy.
7. Notice Board.

ATTESTED


24/11/2023
सरबजीत सिंह / SARABJEET SINGH
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