

SPEED POST



F. No. 380/71/B/SZ/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. 22/03/24

Order No. 85/24-Cus dated 22-03-2024 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-003-19-20 dated 27.05.2019, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicant : The Principal Commissioner of Customs, Hyderabad

Respondent : Shri Mohammed Haroonuddin, Hyderabad

.....

ORDER

A Revision Application No. 380/71/B/SZ/2019-RA dated 04.09.2019 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-003-19-20 dated 27.05.2019, 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. 05/2019-Adjn.Cus (AC) dated 23.01.2019 passed by the Assistant Commissioner of Customs, Hyderabad in the case of Shri Mohammed Haroonuddin, Hyderabad (hereinafter referred to as the Respondent/passenger) and allowed redemption of absolutely confiscated goods seized from the Respondent on payment of fine of Rs. 80,000/-. However, the penalty of Rs. 66,000/- imposed under Section 112(a)(i) on the Respondent was upheld.

2. The adjudicating authority vide Order-in-Original No. 05/2019-Adjn.Cus (AC) dated 23.01.2019 order for:

- (i) absolute confiscation of the two pieces of gold bars of 24 carat purity, weighing 216 grams and valued at Rs. 6,57,720/- recovered from Shri Mohammed Haroonuddin, under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962;
- (ii) absolute confiscation of mobile battery and grey coloured tape in which gold bars were concealed, under the provisions of Section 118(a) of the Customs Act, 1962; and,
- (iii) imposition of penalty of Rs. 66,000/- under Section 112(a)(i) of the Customs Act, 1962 on Shri Mohammed Haroonuddin.

3.1 Brief facts of the case are that the Respondent arrived on 21.11.2017 at Rajiv Gandhi International Airport, Hyderabad from Muscat. He was intercepted by the officers of Customs (Air Intelligence Unit), Hyderabad Customs Commissionerate,

Hyderabad at the arrival hall of airport after he had opted to walk out through the green channel and on a reasonable belief that he was carrying prohibited goods in violation of the provisions of the Customs Act, 1962. The officer enquired from the passenger as to whether he was in possession of any dutiable or prohibited goods for which he replied in the negative. On search of the person and his baggage, the passenger was found to be in possession of two gold bars (24 carat) weighing 216 grams and valued at Rs. 6,57,720/- which had been kept concealed along with a battery wrapped with a gray colour tape in a mobile box. He had not filed any declaration form with the customs authorities. The impugned gold bars along with the mobile battery and the wrapper used to conceal the gold bars were seized by the officers of customs under the provisions of the Customs Act, 1962, vide panchanama dated 21.11.2017, on a reasonable belief that they were smuggled by the passenger and not declared to the Customs officers with an intent to evade payment of Customs duty and the same were liable to confiscation under the provisions of Customs Act, 1962.

3.2 The statement of passenger was recorded on 21.11.2017 under Section 108 of the Customs Act, 1962. He stated inter-alia that he was 25 years old and working as driver in Jeddah; that he had come to see his family in Hyderabad; that he has procured the gold bars in Jeddah; that he did not declare the goods to Customs officials intentionally to avoid detection by Customs officers; that he brought gold for monetary gain and that he accepted his offence.

3.3 The original adjudicating authority found that the passenger had attempted to smuggle gold out without declaring it before Customs officers as required under the provisions of Section 77 of the Customs Act, 1962 and contravened the provisions of Section 7 of Foreign Trade (Development & Regulation) Act, 1992 read with Rule 12 of Foreign Trade (Regulation) Rules, 1993; that the passenger was the owner of the impugned gold ; that the passenger was entitled to import gold under the provisions of Baggage Rules, 2016 read with Notification No. 50/2017-Customs dated 30.06.2017 since the stay of the passenger abroad was more than six months and

that the gold attempted to be smuggled was 'prohibited goods' in terms of Section 2(33) of the Customs Act, 1962 since they were not declared but concealed ingeniously with other goods and sought to be smuggled and thereby rendered the impugned goods liable for confiscation under Section 111 of the Customs Act, 1992. Further, the original adjudicating authority vide Order-in-Original No. 05/2019-Adjn.Cus (AC) dated 23.01.2019 ordered absolute confiscation of said impugned goods. Aggrieved, the Respondent filed appeal before the Commissioner (Appeals), Hyderabad. The Commissioner (Appeals) vide the impugned Order-in-Appeal, modified the said order of adjudicating authority and allowed redemption of seized and absolutely confiscated goods from the Respondent on payment of fine and upheld the penalty imposed on the Respondent. Aggrieved, the Applicant department filed instant Revision Application.

5. 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; 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.

6. Personal hearings in the matter were granted on 15.03.2024 and 22.03.2024. Shri Mohd. Shahbaz, Advocate on behalf of Respondent appeared on 15.03.2024 and submitted that the Respondent was an eligible passenger to bring gold; that he was working abroad for a number of years; that the allegation of concealment is not correct as the gold was merely taped to the battery of his mobile phone for safety purposes and that the fine and penalty imposed vide the O-I-A has been paid by the Respondent but the gold was not released to him. Though he accepted that the Respondent did not declare the gold to Customs, he seeks that in view of his

eligibility, ownership of the gold and payment of RF and PP, the gold should be given to him as per law. No one appeared from Applicant's side and also no request for adjournment was received.

7. The Government has examined the matter. It is apparent that the Respondent did not declare the gold brought by him, as required under Section 77 of Customs Act, 1962, to the Customs Authorities at the airport. The Respondent admitted to the recovery of gold from him as well as to the fact of non-declaration in his statement, tendered under Section 108 of Customs Act, 1962. It is also observed that the Respondent chose not to declare the impugned goods which were ingeniously concealed. The argument that the gold was taped to the mobile battery for safety purpose only is not tenable as the Respondent did not declare the goods to Customs, which points to the intent to conceal and evade customs duty.

8. As per rule 3(b) of the Baggage Rules read with Annexure-I, gold or silver ornaments only upto a value of Rs. 50,000/- (Rupees Fifty Thousand only) can be imported if worn in person or carried on person. In this case, the imported gold was not in jewellery form, was not worn nor carried on the person and was of a much higher value. Further, it was incumbent on the part of the Respondent to have made a proper declaration under Section 77 of the Customs Act, 1962.

9.1 In the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Hon'ble Supreme 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*". The provisions of Section 113(d) are in pari-materia with the provisions of Sections 111 (d). In the case of 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*". In its judgment, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (2021-TIOL-187-SC-CUS-LB), the Hon'ble

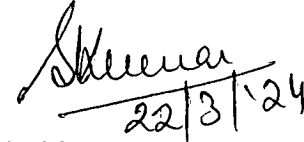
Supreme Court has followed the judgments in Sheikh Mohd. Omer (supra) and Om Prakash Bhatia (supra) to hold that *"any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions."* Moreover, the Hon'ble 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 of assigned to it under Section 2(33) of the Act, *ibid.*

9.2 As such, it has to be held that the offending goods are 'prohibited goods'.

9.3 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." Such a case is not made out. 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"*. Since there is no case that the order of the original authority suffers from any illegality or oblique motive, it has to be held that the authority exercised their discretion correctly.

10. In view of the above, the impugned OIA dated 27.05.2019 is set aside and the OIO dated 23.01.2019 is restored. The revision application is allowed in above terms.


22/3/24

(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. 85 /24-Cus dated 22-03-2024

Copy to:

1. The Commissioner of Customs & Central Tax (Appeals-I), 7th Floor, GST Bhavan, L.B Stadium Road, Basheerbagh, Hyderabad-500004
2. Shri Mohammed Haroonuddin, S/o Shri Mohammed Saber, H.No. 17-3-186/26, Imam Bada, Yakutpura, Hyderabad -500023
3. Sh. Shaik Aleem Akthar, Advocate, H.No. 17-2-1202/A/18, Washed Colony, Rein Bazar, Hyderabad – 500002.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED


22/3/24

सरबजीत सिंह / SARABJEET SINGH
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor., B-Wing
14, Hudco Vishala Building, Bhikaji Cama Place,
New Delhi-110066