

SPEED POST



F. No. 373/176/B/SZ/2020-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.....31/01/2025

Order No. 11 /25-Cus dated 31/01/2025 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 under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. HYD-CUS-000-APP-020-20-21 (APP-I) dated 14.07.2020, passed by the Commissioner of Customs & Central Tax (Appeals), Hyderabad.

Applicant : Sh. Dhasthagir. M, Chennai.

Respondent : The Principal Commissioner of Customs, Hyderabad.
.....

ORDER

A Revision Application No. 373/176/B/2020-RA dated 07.08.2020 has been filed by Shri Dhasthagir M, Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. HYD-CUS-000-APP-020-20-21(APP-I) dated 14.07.2020, passed by the Commissioner of Customs & Central Tax (Appeals), Hyderabad. The Commissioner (Appeals) has upheld the Order-in-Original passed by the Additional Commissioner of Customs, Hyderabad, bearing No. 69/2019-Adjn.Cus (ADC) dated 12.09.2019. The Additional Commissioner of Customs, Hyderabad confiscated foreign origin gold bars weighing 1120.780 grams valued at Rs.34,57,606/-seized from the Applicant under Section 111(d) & 111(j) of the Customs Act, 1962 as well as the hand baggage of the Applicant along with the material used to conceal impugned gold items viz. gum tape under Section 119 of the Customs Act, 1962. A penalty of Rs. 7,00,000/- was also imposed under Section 112(b)(i) of the Act ibid on the Applicant.

2. Brief facts of the case are that on 21.07.2018, the officers of Directorate of Revenue Intelligence (DRI), Zonal Unit, Hyderabad (hereinafter referred to as "the officers") acting upon specific intelligence, intercepted the Applicant who was travelling from Madurai to Hyderabad, carrying gold of foreign origin, at the Rajiv Gandhi International Airport, Hyderabad. The officers enquired from the applicant as to whether he was in possession of gold in any form, to which the applicant replied that on the request of a person named Farooq, he had retrieved a packet wrapped in polythene cover from the toilet area of the aircraft in which he had travelled from Madurai to Hyderabad and the said packet was in his hand baggage. The applicant revealed that he was travelling under an assumed name of JOHN DAVID/BBYAN DAVID and his real name was Dhasthagir M S/o Late Mohammed Mohideen. The applicant informed the officers that the two packages contained gold in paste form. The officers then recovered the two packages totally weighing 1850 grams containing gold in paste form on the reasonable belief that the same were liable for confiscation, seizure was made under Panchanama dated 21.07.2018. The Govt. approved assayer had, in the continued presence of the Applicant and the panchas, overseen the extraction of 1120.780 grams of gold from 1850 grams of gold paste recovered by the

officers from the applicant. The Govt. approved assayer certified the extracted gold to be 1120.780 grams in weight and of 99.5 % purity, valued at Rs.34,57,606/.

3. In his voluntary statement dated 22.07.2018 recorded under Section 108 of the Customs Act, 1962, the Applicant, inter-alia, stated that a person named Farooq came into his acquaintance while he was doing laptop business earlier and informed him that his associate would be concealing gold in the toilet area of the aircraft coming from Colombo to Madurai and the same aircraft would fly from Madurai to Hyderabad. He requested the applicant to board the said aircraft at Madurai as a domestic passenger from Madurai to Hyderabad and retrieve the gold concealed in the toilet area of the aircraft and hand it over to his associate at Hyderabad who would meet him outside. Accordingly, Farooq handed him a ticket from Madurai to Hyderabad, informed the Applicant that the ticket was booked in the name of JOHN DAVID/BBYAN DAVID and handed over an Identity Card issued by Election Commission of India bearing ABQ0955062 with the instruction that the applicant should reveal his name as shown in the Identity card if enquired by any one during the journey; that he has to retrieve the gold discreetly and handover the same to his associate, who would identify the applicant on the basis of the photograph sent by Farooq to the said associate; that he boarded the aircraft and retrieved the packet from toilet of the aircraft containing two packages and placed it in his hand baggage; that after reaching Hyderabad, as he entered the arrival hall, the officers along with witnesses stopped him. Upon enquiry by the officers, the Applicant revealed that he was carrying gold which was retrieved from the aircraft toilet as per instructions of a person named Farooq; that the officers then checked his hand baggage and found the package retrieved by him from the aircraft; that in presence of the applicant and panchas the entire process of extraction of gold weighing 1120.780 grams with purity of 99.5% (as assayed by the gold valuer) was carried out. The Applicant was placed under arrest on 22.07.2018 and was released on furnishing bail bond for Rs.3,50,000/- supported by cash surety to the tune of Rs. 3,50,000/- and two sureties. On the reasonable belief that the impugned gold was brought into India in contravention of the Customs Act, 1962, the officers seized the impugned gold under Mahazar dated 21.07.2018. The matter was adjudicated vide the aforementioned

Order-in-Original No. 69/2019-Adjn.Cus(ADC) dated 12.09.2019. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was dismissed.

4. The above revision application has been filed mainly on the grounds that order of adjudicating authority is against law, weight of evidence and circumstances and probabilities of the case; that gold is not a prohibited item and according to the liberalized policy, it can be released on payment of redemption fine and baggage duty; that simply because of not declaring the gold, the department cannot become the owner of the goods and hence option of redemption ought to be exercised under Section 125 of the Customs Act, 1962 with appropriate duty; that the impugned order be set aside; that re-export or release the gold may be permitted on payment of duty, fine/penalty and that penalty imposed upon him be set aside or reduced.

5. Personal hearings in the matter were fixed on 15.07.2024, 09.08.2024 and 20.09.2024, but no one appeared from either the Applicant's or the Respondent's side. Therefore, the matter is taken up for decision based on the available records.

6. The Government has examined the matter. The applicant contended that as per the Central Government liberalised policy, an eligible passenger can bring up to 01 Kg of gold under concessional rate of duty. However, the benefit of concessional duty is available to a passenger who has stayed abroad for a minimum period of 6 months, apart from having convertible foreign currency for the payment of duty, provided the gold is 01 kg or less and the gold is duly declared in terms of Serial No.356 and Condition No. 41 of Notification No.50/2017-Customs dated 30.06.2017 (as amended). In the instant case, these conditions are not met as the applicant is a domestic passenger who travelled from Madurai to Hyderabad. It is on record that the Applicant in his own statement dated 22.07.2018 recorded under Section 108 of the Customs Act, 1962 had admitted that under the instruction of a person named Farooq, he had retrieved gold of foreign origin in paste form from the toilet section of the aircraft by which he was travelling from Madurai to Hyderabad on 20.07.2018, which was concealed by Farooq's associate in the toilet section of the said aircraft, while the aircraft was on its international run from Colombo to Madurai; as also that he retrieved the gold in paste form from the aircraft with an intention to carry the same

out of the airport and hand it over Farooq's associate. The relevant sequence of events has been recorded in the Mahazar in the presence of independent witnesses which further substantiates the acts of Applicant and his attempt to smuggle the impugned gold. Reliance is placed on the judgement of *Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}*, wherein *Hon'ble Supreme Court held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}*, the *Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction*. Thus, the evidence on record indicates that the impugned gold in the instant case was smuggled into the country and the applicant being a domestic passenger, was not an eligible passenger as per the conditions of Notification No. 50/2017-Cus. dated 30.06.2017.

7. As per Section 123 of the Act, *ibid*, 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. The Applicant did not declare the gold items, as stipulated under Section 77 of the Customs Act, 1962. No documents evidencing ownership and licit purchase have been produced. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government concurs with the lower authorities that the impugned goods were liable to confiscation under Section 111(d), 111(j) *ibid* and that the penalty was imposable on the Applicant.

8.1 The Government observes that 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 fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant in this case did not fulfil 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 (i.e the Hon'ble jurisdictional 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 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.*

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

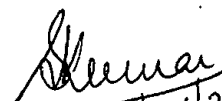
9. The Government observes that the original authority had denied the release of gold items on payment of redemption fine, under Section 125(1) of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of *Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T.*

306 (S.C.)], that the option to release 'prohibited goods' on redemption fine is discretionary. 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.*" 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*". Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

10. In view of the facts and circumstances of the case the penalty imposed by the original authority, as upheld by Commissioner (Appeals), is neither harsh nor excessive.

11. The case laws relied upon by the Applicant, in support of his various contentions do not come to his rescue in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

12. The revision application is, accordingly, rejected.


31/01/2025

(Shubhagata Kumar)

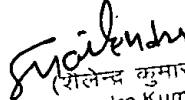
Additional Secretary to the Government of India

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Order No. 11 /25-Cus dated 31/01/ 2025

Copy to:

1. The Commissioner of Customs & Central Tax 7th Floor, Kendriya Shulk Bhavan, Opp. L.B. Stadium, Basheerbagh, Hyderabad-500004.
2. The Pr. Commissioner of Customs, Hyderabad, GST Bhawan, L.B. Stadium Road, Hyderabad-500004.
3. Sh. S. Palanikumar, Kameshwaran & P. Kamalamalar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600001.
4. PPS to AS(RA).
5. Guard file.
- ✓ 6. Spare Copy.
7. Notice Board.


(शलेन्द्र कुमार मीना)
dra Kumar Meena)
अनुभाग अधिकारी / Section Officer
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