

SPEED POST



F.No. 373/183/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 27/11/24.

Order No. 237/24-Cus dated 27-11-2024 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 Application under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. HYD-CUS-000-APP-025-20-21(APP-1) dated 23.07.2020, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicant : Shri Japarulla Kalifulla, Madurai

Respondent : The Principal Commissioner of Customs, Hyderabad

ORDER

A Revision Application No. 373/183/B/SZ/2020-RA dated 13.08.2020 has been filed by Shri Japarulla Kalifulla, Madurai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. HYD-CUS-000-APP-025-20-21(APP-1) dated 23.07.2020, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad. The Commissioner (Appeals-I) has rejected the appeal filed by the Applicant against the Order-in-Original passed by the Deputy Commissioner of Customs, Rajiv Gandhi International Airport, Hyderabad, bearing no. 02/2020-Adjn.Cus (DC) dated 15.01.2020, wherein one gold rod weighing 276.00 grams and valued at Rs. 9,38,400/-, recovered from Applicant, were confiscated absolutely under Section 111(i), 111(l) and 111(m) of the Customs Act, 1962, besides penalty of Rs. 1,00,000/- was also imposed on the Applicant under Section 112 (a) of the Act, *ibid*.

2. Brief facts of the case are that acting on specific information, the officers of Air Intelligence Unit rushed to domestic departure area of Rajiv Gandhi International Airport (RGIA), Hyderabad and on reaching the place, they identified a passenger (the Applicant herein) to be carrying goods in violation of the provisions of the Customs Act, 1962 who was intercepted by the officers. The Applicant arrived from Imphal by flight No.6E 435 to Hyderabad and he was on transit from Hyderabad to Madurai. The officers enquired with the Applicant as to whether he was in possession of any dutiable or prohibited goods for which the Applicant replied in negative. During search of one of his checked-in luggage i.e. a trolley bag, the officers found one movable wall fixing television stand along with his clothes and personal effects. On examination of the television stand by the officers, one yellow metal rod concealed in the cavity of the stand was found which was found to be of gold with 99.5% purity. A Government approved valuer was requisitioned for analysing the metal item who subjected the recovered metal item for some tests and in his report dated 25.06.2019 certified that the metal rod is gold of 24 carat weighing 276.00 grams valued at Rs. 9,38,400/- The Applicant stated that the television stand was given by his friend Mr. Kanan at Imphal Airport to be handed over it to someone at Chennai without informing him about the gold rod concealed in it. As the gold rod was carried by way of concealment and it was apparent that the Applicant had attempted to transport gold not

brought in a licit manner but brought into the country in the form of a rod, in contravention of the provisions of Section 77 and 79 of the Customs Act, 1962. The above said gold rod was seized by the officers vide Panchanama dated 25.06.2019 on reasonable belief that the gold being carried by the Applicant was smuggled gold and was being transported by the Applicant concealed in the TV stand and the same was liable to confiscation under the provisions of Customs Act, 1962.

3. A statement of Shri Japarulla Kalifulla was recorded on 25.06.2019 by the Air Customs Superintendent, AIU, RGIA, under Section 108 of the Customs Act, 1962 in which he admitted the offence committed by him. He further requested to finalise the case as soon as possible without issuing a show cause notice and grant of personal hearing.

4. The adjudicating authority passed the impugned order based on the evidence available on record vide Order-in-Original No. 02/2020-Adjn.Cus (DC) dated 15.01.2020 ordered absolute confiscation of the gold rod weighing 276.00 grams and valued at Rs. 9,38,400/- in terms of Sections 111(i), 111(l) and 111(m) of the Customs Act, 1962. He also imposed a penalty of Rs. 1,00,000/- on the Applicant under Section 112(a) of the Customs Act, 1962. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad, which has been rejected. Aggrieved by the O-I-A, the Applicant filed this Revision Application.

5. The revision application has been filed mainly on the grounds that the order of the appellate authority is against law, weight of evidence, circumstances and probabilities of the case; that gold is a restricted item and not a prohibited good; that the adjudicating authority ought to have allowed redemption of the seized gold. The prayer is for the impugned Order-in-Appeal to be set aside; and that the impugned gold items be permitted for re-export/released and that the penalty be reduced.

6. No one appeared for the Personal hearing fixed on 14.10.2024 and 25.10.2024 from either the Applicant's or the Respondent's side. However, on behalf of the Applicant, Smt. P. Kamalamalar, Advocate, vide letter dated 25.10.2024 reiterated the written

submission and requested that the orders be passed accordingly. Therefore, the matter is taken up for decision based on the available records.

7. The Government has examined the matter. It is observed that the Applicant did not declare the impugned gold which was concealed ingeniously and the same was recovered from him only after he was intercepted by the Customs. Thus the requirement of Section 77 of the Customs Act, 1962 to declare the goods was not met. He admitted in his own statement recorded under Section 108 of the Custom Act, 1962 to the smuggling of the said gold, stating that it did not belong to him and he had carried the same for monetary benefit. 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."* In the present case, the Applicant's statement makes it clear that he was involved in smuggling due to lure of money. The Government concurs with the findings of the appellate authority.

8. 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 Act, *ibid*. The Applicant had failed to produce any document showing legal import of the said gold items. 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 seized gold item was liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant.

9.1 The Applicant has contended that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is against several

judgements of the Hon'ble Supreme Court in which it has been held that the goods, import/export whereof is allowed subject to certain conditions, are to be treated as 'prohibited goods' in case such conditions are not fulfilled. 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 had not 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."

9.2 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----."

9.3 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*.

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

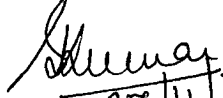
10. The Government observes that the original authority had denied the release of the impugned gold item on payment of redemption fine, under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court, in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector 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.

11. The Applicant has requested to be allowed to re-export the offending goods. The Government observes that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Act, *ibid* and upon a plain reading of the same, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of *Deepak Bajaj* {2019 (365) ELT 695 (All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export under Section 80 of the Act, *ibid*. In this case, the Applicant had made no declaration in respect of the subject goods. Further, the Hon'ble Delhi High Court has, in the case of *Jasvir Kaur vs. UOI* {2019 (241) ELT 521 (Del.)}, held that re-export "*cannot be asked for as of right-----*. *The passenger cannot be given a chance to try his luck and smuggle*

Gold into the country and if caught he should be given permission to re-export." Hence, the request for re-export cannot be allowed.

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

13. The revision application is, accordingly, rejected.


27/11/24
(Shubhagata Kumar)

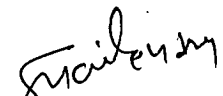
Additional Secretary to the Government of India

Shri Japarulla Kalifulla,
S/o Shri Kalifulla,
4-101, Palli Vasal Street,
Melurtaluka, Karungalakudi,
Madurai, Tamil Nadu - 625 101

Order No. 237/24-Cus dated 27-11-2024

Copy to:

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


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

