

**SPEED POST**



F. No. 373/211/B/SZ/2018-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. 25/04/23..

Order No. 152/23-Cus dated 25-04-2023 of the Government of India passed by Sh. Sandeep Prakash, 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 C.Cus I No. 48/2017 dated 21.03.2017, passed by the Commissioner of Customs (Appeals-II), Chennai.

Applicant : Sh. Subramanyam Reddy Akepati, Kadapa

Respondent : Pr. Commissioner of Customs, Chennai-I

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**ORDER**

A Revision Application, bearing No. 373/211/B/SZ/2018-RA dated 08.08.2018, has been filed by Sh. Subramanyam Reddy Akepati, Kadapa (hereinafter referred to as the Applicant), against the Order-in-Appeal C. Cus I No. 48/2017 dated 21.03.2017, passed by the Commissioner of Customs (Appeals-II), Chennai, whereby the Commissioner (Appeals) has upheld the Order-in-Original of the Additional Commissioner of Customs (Airport), Chennai, bearing no. 152/2016-17-Airport dated 22.11.2016, except to the extent of setting aside the penalty of Rs. 10,000/-, imposed under Section 114AA of the Customs Act, 1962. Vide the aforementioned Order-in-Original, 04 gold cut bits of 24 carat purity, totally weighing 649.7 grams and collectively valued at Rs. 19,74,438/-, recovered from the Applicant, had been absolutely confiscated under Section 111(d) & 111(l) of the Customs Act, 1962. Besides, penalties of Rs. 1,90,000/- & Rs. 10,000/- were also imposed on the Applicant, under Sections 112(a) & 114AA, respectively, of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived at Chennai Airport, from Kuwait, on 13.06.2016, at the exit of the arrival hall after the he had passed through the Customs Green Channel. Upon being questioned whether he was in possession of any dutiable/prohibited goods, he replied in negative. He had not filled in the Customs Declaration Form. Upon examination of his person, 04 yellow coloured metal cut bits were found concealed stitched inside the inner wear worn by him. The Government of India approved gold appraiser certified the recovered yellow coloured metal cut bits to be gold of 24 carat purity, totally weighing 649.7 grams and also appraised the value of the same at Rs. 19,74,438/-. The Applicant was neither in possession of any valid permit nor was he eligible to bring gold. The Applicant, in his statement recorded immediately after seizure, under Section 108 of the Customs Act, 1962, *inter-alia*, stated that he had been living in Kuwait along with his wife for the past ten years and had been working in a satellite shop as a technician and earns 600 Kuwaiti Dinars per month; that he was not in possession of any legal/valid documents for the legal import of the gold or any foreign/Indian currency to pay customs duty; that the gold bits were purchased by him from his savings in Kuwait to the effect of which he produced the cash invoices bearing serial numbers 1936 and 1937 issued by Monther Golden Jewellery

Est.; and that he had intended to smuggle the gold by way of concealing it in his underwear and not declaring it to customs and sell it in India for monetary benefit.

3. The revision application has been filed, mainly, on the grounds that the Applicant was not allowed to declare the goods; that he did not cross the Customs barrier; that he is the owner of the gold; that import of gold is not prohibited; that he ought to have been allowed to redeem the gold and permitted to re-export; and that penalty be reduced.

4. Personal hearing in the matter was fixed on 05.04.2023 wherein, Sh. A. Ganesh, Advocate appeared for the Applicant and requested for adjournment to seek instructions. In the hearing scheduled on 19.04.2023, no one appeared for either side and as such last and final opportunity was granted on 24.04.2023. In the personal hearing held on 24.04.2023, in virtual mode, Sh. A. Ganesh, Advocate appeared for the Applicant and submitted that, at this stage, he is restricting his request to allow re-export of the seized gold. He also requested that penalty may be reduced. No one appeared for the Respondent department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. At the outset, it is observed that OIA impugned herein was passed on 21.03.2017 whereas, as per RA, the Applicant herein claims to have received it only on 25.05.2018, i.e., after more than 1 year and 2 months of the date of passing of Order. Such a long delay in communication of Order is unusual and no evidence has been placed on record to substantiate the claimed date of receipt/communication. Therefore, the instant RA is liable to be rejected as time barred.

5.2 On merits, it is observed that the Applicant was intercepted after he had passed through the Customs Green Channel. The Applicant admitted the recovery of gold items from him and that he intended to clear the gold by way of concealment in his underwear to evade duty for monetary benefit. Manner of concealment, i.e., by stitching inside the underwear makes the intention to smuggle manifest and also belies all claims of bonafide. Further, the entire proceedings have been covered under Mahazar, in the presence of two independent witnesses, which also corroborates the sequence of events. Hence, the

contentions of the Applicant that he did not cross the customs barrier or that he was not allowed to declare the goods under Section 77 of the Customs Act, 1962 are not sustainable.

5.3 The contention of the Applicant that the import of gold is not 'prohibited' is also not acceptable. The import of gold, in baggage, is permitted subject to certain conditions, which have not been fulfilled in the present case. Hence, keeping in view the law settled by the Apex Court, in the cases of Sheikh Mohd. Omer {1983 (013) ELT 1439 (SC)}, Om Prakash Bhatia {2003 (155) ELT 423 (SC)} and Raj Grow Impex LLP {2021 (377) ELT 0145 (SC)}, it has to be held that the offending gold is to be treated as 'prohibited goods'.

5.4 The Government observes that the original authority had denied the release of seized goods 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. 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."* 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 *"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)], 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."* In the present case, the original authority has ordered for absolute confiscation, for the relevant and reasonable considerations specifically recorded in para 12 of the OIO. Hence, keeping in view the ratio of the decisions aforesaid, the Commissioner (Appeals) has correctly refused to interfere in the matter.

5.5.1 Further, as far as permitting re-export of offending goods is concerned, the Government observes that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Customs Act, 1962, which reads as follows:

"Temporary detention of baggage.- Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his name."

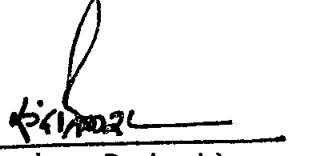
5.5.2 On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of Deepak Bajaj {2019 (365) ELT 695 (All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export 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."

5.5.3 Hence, the Government holds that the request for re-export has been correctly refused by the lower authorities.

6. In the facts and circumstances of the case, the quantum of penalty imposed, under Section 112 *ibid*, is neither excessive nor harsh. In fact, keeping in view the manner of concealment, the original authority has been rather lenient in keeping the penalty limited to only 10% of the value of the offending goods. At this stage, the Government also records its disapproval of dropping of the penalty imposed, under Section 114AA, by the

Commissioner (Appeals), as the reasons cited by him in support of his decision to do so are without any legal basis. However, as the department has not been aggrieved, the Government refrains from interfering in the matter.

7. The revision application is rejected for reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India

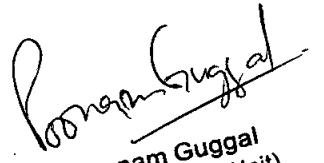
Sh. Subramanyam Reddy Akepati  
S/o Sh. Akepati Narasimha Reddy  
Jaguaripalli Anathayyagari,  
Palli Pullampet, Kadapa,  
Andhra Pradesh.

Order No. 152 /23-Cus dated 25-04-2023

Copy to:

1. The Commissioner of Customs (Appeals-I), 3<sup>rd</sup> Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
2. The Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport and Air Cargo Complex, New Custom House, Meenambakkam, Chennai-600027.
3. Sh. A. Ganesh, Advocate, F Block 179, IV Street, Annanagar, Chennai-600102.
4. PPS to AS(RA).
5. Guard File.
- ✓ 6. Spare Copy.
7. Notice Board.

ATTESTED



पूनाम गुग्गल / Poonam Guggal  
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