

SPEED POST



F. No. 373/221/B/2018-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 25/4/23..

Order No. 153 /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 TCP-CUS-000-APP-153-18 dated 08.08.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. Prem Nazir, Chennai

Respondent : The Commissioner of Customs (P), Tiruchirappalli

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ORDER

A Revision Application, bearing No. 373/221/B/2018-RA dated 27.08.2018, has been filed by Sh. Prem Nazir, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal TCP-CUS-000-APP-153-18 dated 08.08.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli, whereby the Commissioner (Appeals) has upheld the Order-in-Original No. 45/2018 dated 24.02.2018 passed by the Assistant Commissioner of Customs (Airport), Tiruchirappalli. Vide the aforementioned Order-in-Original, 01 gold ring of 24 carat purity, weighing 16.000 grams and valued at Rs. 47,648/-, recovered from the Applicant, had been absolutely confiscated under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. Besides, 01 no. of Cannon Camera and 01 no. of Cannon Zoom Lens, valued at Rs. 2,07,995/- & Rs. 67,262/-, respectively, had been confiscated under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. However, the Cannon Camera and Cannon Zoom Lens have been allowed to be redeemed on payment of fine of Rs. 30,000/- and applicable Customs duties. Besides, penalty of Rs. 15,000/- was also imposed on the Applicant, under Section 112(a) & 112 (b) of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived at Tiruchirappalli Airport, from Singapore, on 08.02.2017, when he was crossing the Customs Green Channel. On enquiry, it was found that he had not declared any dutiable items to the Customs officers nor submitted any Customs Declaration Form. On being asked whether he had brought any dutiable items with him either in person or in his baggage, he replied in negative. Upon the search of his person, 01 no. of gold ring was recovered from his pant ticket pocket. Further, 01 no. of Cannon Camera and 01 no. of Cannon Zoom Lens made in Japan were recovered from his baggage. Upon being questioned whether he had any valid permit/licence/document for the import of the said goods, he replied in negative. On further enquiry by the officers whether he had money to pay the Customs duty for the goods brought by him, he replied that since he intended to clear the goods without paying any customs duty, hence, he did not carry any money. The assayer appraised the above said gold item in ring form as of 24 carat purity, weighing 16.000 grams and valued at Rs. 47,648/-. The Applicant, in his statement dated 08.02.2017, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that

all the goods were carried by him for his personal use only; and that he bought those items in Singapore from his own money. He accepted that he had not declared the items in his customs declaration form as he wanted to clear the same without declaration to evade payment of customs duty.

3. The revision application has been filed, mainly, on the grounds that the Applicant was not given sufficient opportunities while deciding the case; that he did not pass through the Green Channel and he was all along in the red channel; that import of gold is not prohibited and it can be released on payment of duty for re-export; and that penalty may be reduced.

4. Personal hearings in the matter were fixed on 05.04.2023, 19.04.2023 and 24.04.2023. However, no one appeared for either side nor any request for adjournment has been received. The Ld. Advocate for the Applicant has, vide letter dated 05.04.2023, requested that matter may be decided based on available records. Since sufficient opportunities have been granted and keeping in view the request made on behalf of the Applicant, the case is taken up for disposal based on records.

5.1 The Government has carefully examined the matter. It is observed that the Applicant was intercepted while crossing Customs Green Channel. The Applicant admitted the recovery of gold ring and other goods from him and that he intended to clear these goods without payment of Customs duty. Moreover, he did not have any permit/licence/document for the import of offending goods nor did he have money to pay the Customs duty. 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 contention of the Applicant that he did not pass through the Green Channel and that he was all along in the red channel is not sustainable.

5.2 The contention of the Applicant that he was not given sufficient opportunities while deciding the case is also untenable in as much as he attended the PH on 11.10.2017

before the original authority. After change of adjudicating authority, he was granted three more opportunities for hearing, which he did not avail of.

6. 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. The Applicant did not declare the gold item, as stipulated under Section 77 of the Act, *ibid*. No documents evidencing ownership and licit purchase were produced at the time of interception. 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 agrees with the lower authorities that the seized gold item was liable to confiscation under Section 111 *ibid* and the penalty was imposable on the Applicant.

7.1 The Government observes that import of gold and articles thereof in baggage is allowed subject to fulfillment of certain conditions. In the present case, it is not even contended that these conditions were fulfilled by the Applicant herein. It is settled by a catena of judgments of Hon'ble Supreme Court that goods, in respect of which conditions subject to which their import/export is allowed are not fulfilled, are to be treated as 'prohibited goods'. [Ref: Sheikh Mohd. Omer {1983 (13) ELT 1439 (SC), Om Prakash Bhatia {2003 (155) ELT 423 (SC)} & Raj Grow Impex LLP {2021 (377) ELT 145 (SC)}]. Further, the Hon'ble Madras High Court (i.e. the Hon'ble jurisdictional High Court) has, in the cases of Malabar Diamond Gallery P. Ltd. {2016 (341) ELT 465 (Mad.)} and P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, taken this view specifically in respect of import of gold in baggage. Hence, there is no doubt that the goods seized in the present case are to be held to be 'prohibited goods'.

7.2 In view of the above, the contention of the Applicant that the offending gold item is not 'prohibited goods', cannot be accepted.

8.1 The Government observes that the original authority had denied the release of seized 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 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 P. Sinnasamy (supra), 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 of the gold item, for relevant and reasonable considerations recorded in paras 26 to 31 of his Order. Therefore, keeping in view the judicial pronouncements above and the facts of the case, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

8.2.1 Further, as far as 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."

8.2.2 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 Commissioner (Appeals) has recorded that 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."

8.2.3 Hence, the question of allowing re-export also does not arise.

9. In the facts and circumstances of the case, the quantum of penalty imposed is just and fair.

10. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

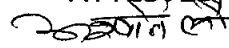
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Order No. 153/23-Cus dated 25-04-2023

Copy to:

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3. Smt. P. Kamalamalar, Advocate, No. 10, Sunkrama Street, 2nd Floor, Chennai-600001.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED


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