

SPEED POST



F. No. 375/20/B/2021-RA
F. No. 380/08/B/2021-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. 30/6/22

Order No. 204-205/22-Cus dated 30-06-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Applications filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No.CC(A)Cus/D-I/Air/851/2020-21 dated 31.12.2020 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037.

Applicant : Sh. Mohammad Ameer, Kanpur, UP;
Commissioner of Customs (Airport & General), New Delhi.

Respondent: Commissioner of Customs (Airport & General), New Delhi;
Sh. Mohammad Ameer, Kanpur, UP.

ORDER

Two Revision Applications, bearing Nos. 375/20/B/2021-RA dated 05.04.2021 & 380/08/B/2021-RA dated 07.04.2021, have been filed by Sh. Mohammad Ameer, Kanpur, UP (hereinafter referred to as the Applicant-1) and the Commissioner of Customs (Airport & General), New Delhi (hereinafter referred to as the Applicant-2), respectively, against the Order-in-Appeal No. CC(A)Cus/D-I/Air/851/2020-21 dated 31.12.2020, passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, Delhi-110037. The Commissioner (Appeals) has modified the order of the Additional Commissioner of Customs, IGI Airport, Terminal-3, New Delhi, bearing no. 156/2020-21 dated 26.11.2020, wherein 01 silver coated gold kada brought by the Applicant-1, Sh. Mohammad Ameer, weighing 310 grams and valued at Rs. 11,98,144/-, had been confiscated absolutely. Besides, a penalty of Rs. 2,00,000/- was imposed on the Applicant-1, under Section 112 of the Customs Act, 1962. The Commissioner (Appeals) allowed the redemption of the confiscated goods on payment of fine of Rs. 1,20,000/- . The penalty of Rs. 2,00,000/- imposed by the original authority on the Applicant-1, has also been reduced to Rs. 1,20,000/- by the appellate authority.

2. Brief facts of the case are that the Applicant-1 arrived, on 29.02.2020, at the IGI Airport from Dubai and was intercepted after he had crossed the Customs Green Channel. After search of his person and of his baggage, 01 silver coated gold kada, weighing 310 grams and valued at Rs. 11,98,144/-, was recovered from his possession. The Applicant-1, in his statement dated 01.03.2020, recorded under Section 108 of the Customs Act, 1962, admitted

the recovery of subject silver coated gold kada and the acts of omission & commission on his part. He further stated that the recovered gold kada belonged to him and was for his personal use; and that he intentionally did not declare the recovered gold.

3.1 The revision application no. 375/20/B/2021-RA dated 05.04.2021 has been filed by the Applicant-1, mainly, on the grounds that there is no mis-declaration and concealment; and that the redemption fine is on a higher side.

3.2 The revision application no. 380/08/B/2021-RA dated 07.04.2021 has been filed by the Applicant-2, on the grounds that the Applicant-1 had got through the green channel without declaring the recovered gold items by ingeniously concealing the same in the form of gold coated in silver colour with the clear intention to evade customs duty; that the import of gold is prohibited; that the import of gold is not bonafide; and that, therefore, release of the gold article, on payment of redemption fine and penalty, is not correct. A written reply dated 02.06.2022 has been filed on behalf of the Respondent (i.e. Applicant-1).

4. Personal hearing was fixed on 26.05.2022, 13.06.2022 and 29.06.2022. Sh. S.S. Arora, Advocate, appeared in the hearing held, in virtual mode, on 29.06.2022, on behalf of the Applicant-1 in RA No. 375/20/B/2021-RA and for Respondent in RA No. 380/08/B/2021-RA. Sh. Arora supported the option granted by the Commissioner (Appeals) for redemption of gold for the reasons stated in the written reply dated 02.06.2022. He requested for reduction of RF as requested in the RA No. 375/20/B/2021-RA. No one

appeared for the Applicant-2 and no request for adjournment has been received. Hence, it is presumed that the Applicant-2 has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed that the Commissioner (Appeals) has upheld the findings of the original authority to the effect that the goods are liable to confiscation under Section 111; and that the subject goods are prohibited goods. Since, this part of the OIA is not under challenge, the same has attained finality to this extent. Therefore, the issues that are left to be decided are:

- (i) Whether the Commissioner (Appeals) ought to have allowed redemption and, if so, whether redemption fine imposed is appropriate?
- (ii) Whether reduction in penalty imposed is appropriate?

6.1 The original adjudicating authority has denied the release of impugned 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 & Ors vs. Raj Grow Impex LLP & Ors {2021-TIOL-187-SC-CUS-LB}, 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."* In the case of Commissioner of Customs (Air), Chennai-I Vs

P. Sinnasamy {2016(344)ELT1154 (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."*

6.2 In view of the legal position settled by the aforesaid judgments of Hon'ble Supreme Court and the Hon'ble High Courts, it is clear that the Commissioner (Appeals) could have interfered in the matter only if the exercise of discretion by the original authority was tainted by any of the vices indicated by the Hon'ble Courts. Such a case is not made out. Rather, the original authority has ordered absolute confiscation for the reasons brought out in paras 9.3 and 9.4 of his Order, which are relevant and proper. Thus, the order of Commissioner (Appeals) allowing redemption of confiscated gold cannot be sustained.

7. In the facts and circumstances of the case, the Government is not inclined to interfere with the reduction of penalty ordered by the Commissioner (Appeals).

உ.அ. இராஜகோபால்
(பி.என்.டி. இராஜகோபால்) உத்தரவு
செய்தது: 10.08.2021
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செய்து: 10.08.2021

8. In view of the above, the impugned OIA dated 31.12.2020 is set aside to the extent of allowing redemption of confiscated goods. However, reduction in penalty ordered by Commissioner (Appeals) is maintained. The Revision Application No. 380/08/B/2021-RA is disposed of accordingly. The Revision Application No. 375/20/B/2021-RA is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

1. Sh. Mohammad Ameer,
R/o 15/228, Amba Hospital,
Civil Lines, Kanpur, UP-208 001
2. The Commissioner of Customs (Airport & General),
IGI Airport, Terminal-3,
New Delhi-110037

Order No. 204-205/22-Cus dated 30-06-2022

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037.
2. The Additional Commissioner of Customs, IGI Airport, Terminal-3, Delhi-110037.
3. Sh. S.S. Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi - 110029.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy

ATTESTED



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