

SPEED POST



F. No. 375/29/B/2022-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. 03/08/22

Order No. 252 /22-Cus dated 03-08-2022 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 No. CC(A)Cus/D-I/Air/3907/2021-22 dated 09.12.2021 passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Sh. Kheemanand Kandpal, Panchkula, Haryana.

Respondent : The Commissioner of Customs, IGI Airport, New Delhi.

ORDER

A Revision Application No. 375/29/B/2022-RA dated 24.05.2022 has been filed by Sh. Kheemanand Kandpal, Panchkula, Haryana (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/3907/2021-22 dated 09.12.2021 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original passed by the Joint Commissioner of Customs, IGI Airport, New Delhi, bearing no. 153/AS/JC/2018 dated 28.03.2018, wherein, one partially cut gold bar, concealed in packet, wrapped with brown colour cello tape, weighing 740 grams, valued at Rs. 18,24,699/-, recovered from the Applicant, was confiscated absolutely under Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962 along with the concealing material under Section 118 & 119 of the Customs Act, 1962. Penalty of Rs. 3,00,000/- was also imposed on the Applicant under Section 112 & 114AA of the Act, ibid.

2. Brief facts of the case are that the Applicant arrived, on 01.07.2015, at IGI Airport, New Delhi, from Dubai. He was intercepted at exit gate after he had already crossed the customs green channel and diverted for detailed examination. During the search, one packet, wrapped with brown colour cello tape containing some heavy metal was recovered from his socks, which on appraisalment by Jewellery expert was found to be gold of 995 purity, weighing 740 gms, valued at Rs. 18,24,699/-. In his statement dated 01.07.2015, tendered under Section 108 of the Customs Act, 1962, the Applicant stated that his friend Sh. Rakesh Kandpal had arranged funds for his travel and miscellaneous expenses; that Sh. Rakesh Kandpal had directed

him to take the recovered items to IGI Airport, Delhi and get it cleared without payment of Customs duty; that he neither knew the person at Dubai Airport who handed over the goods nor he knew the unknown person who would have contacted him after clearing through Customs; that he would receive Rs. 20,000/- in addition to his expenses for this work; that he knew that import of gold into India attracted Customs duty and illegal import was punishable offence in terms of law and admitted mistake of omission on his part. The original authority, vide the aforesaid Order-in-Original, dated 28.03.2018, confiscated the gold absolutely under Section 111(d), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962. Penalty of Rs. 3,00,000/- was also imposed on the Applicant under Section 112 & 114AA of the Act, *ibid*. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The instant revision application has been filed, mainly, on the grounds that the Order was issued as ex-parte and that, the Applicant never received any communication with regard to granting of personal hearing on the dates mentioned in Order-in-Appeal; that the import of gold is not prohibited; that the Applicant though had not declared the subject goods but claimed the ownership; that penalty is not imposable under Section 114AA as due to oversight, the columns in Customs Declaration Form were left blank and thus, allegations of mis-declaration under Section 77 of the Act, *ibid*, are not correct; that redemption may be allowed on appraised value under Section 125(1) of the Customs Act, 1962; and that either penalty may be waived/reduced.

4. Personal hearing, in virtual mode, was held on 02.08.2022. Sh. Abhishek Pareek, Advocate, appeared for the Applicant and reiterated the contents of the revision application. He requested that the compilation emailed on 02.08.2022 may be taken on record. Sh. Mahender Singh, Supdt. appeared for the department and supported the Orders of the lower authorities. He highlighted that this is a case of ingenious concealment and the Applicant was acting as a carrier.

5. The Government has carefully examined the matter. It is observed that cut piece of gold was concealed in a packet and wrapped in cello tape and recovered from the socks worn by the Applicant, to avoid detection by the Customs authorities at airport. Manner of concealment belies the contention that the Applicant had no intention to smuggle the gold and that the columns in the Customs Declaration Slip were left blank by oversight.

6. The Applicant has contended that the case has been decided ex-parte i.e., without hearing him as no intimation regarding personal hearing was received by him. The Government observes that the Commissioner (Appeals) had granted 03 opportunities for personal hearing to the Applicant, i.e., on 22.07.2021, 11.08.2021, and 27.10.2021. As per Section 153(3) of the Customs Act, 1962, when any notice etc. is sent by registered post or speed post, it shall be deemed to have been received by the addressee, at the expiry of the period normally taken by such post in transit unless the contrary is proved. Thus, the subject contention is not acceptable.

7.1 It is contended on behalf of the Applicant that the import of gold is not 'prohibited'. However, the Government observes that this contention of the

Applicant is in the teeth of law settled by a catena of judgments of Hon'ble Supreme Court. 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 fulfillment of certain conditions. 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."*

7.2 In the case of Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai [2016(341) ELT65(Mad.)], the Hon'ble Madras 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----"

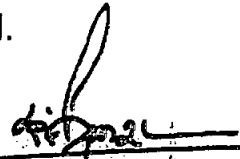
7.3 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted. The case laws relied upon by the Applicant are not applicable, in view of the dictum of Hon'ble Supreme Court and Hon'ble High Court, as above.

8. The original authority has denied the release of offending 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 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)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." In the present case, the Order of the original authority does not suffer from any of these vices. Rather, the original authority has, after due application of mind, ordered absolute confiscation for the relevant and reasonable considerations, specifically brought out in para 5 of the Order-in-Original. Thus, the Commissioner (Appeals) has correctly refused to interfere in the matter.

9. In the facts and circumstances of the case, the penalty imposed by the original authority and upheld by the Commissioner (Appeals) is just and fair.

10. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

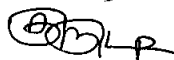
Sh. Kheemanand Kandpal,
S/o Late Sh. Chandramani,
R/o House No. 260, Sector-19,
Panchkula, Haryana-134113.

Order No. 252/22-Cus dated 03-08-2022

Copy to:

1. The Commissioner of Customs, T-3, IGI Airport, New Delhi-110037.
2. The Commissioner of Customs (Appeals), NCH, New Delhi-110037.
3. Sh. Abhishek Pareek, Advocate, 893, Ground Floor, Sector-14, Faridabad, Haryana-121007.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi