



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/200/B/2018-RA & 373/199/B/2020-RA :Date of Issue 24.02.2022
/895

ORDER NO. 101-102/2022-CUS (SZ)/ASRA/MUMBAI DATED 21.02.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS
ACT, 1962.

F.No. : 373/200/B/2018-RA

Applicant : Shri. Meenakshi Sundaram

Respondent : Commissioner of Customs, No.1, Williams Road,
Truchirapalli - 620 001.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
TCP-CUS-000-APPELLANTS-066-17 [A.No. C24/113/
2016 -TRY(CUS) dated 30.10.2017 passed by the
Commissioner of Central Excise (Appeals-II), Trichirappalli
: 620 001.

F.No. : 373/199/B/2020-RA

Applicant : Shri. Meenakshi Sundaram

Respondent : Commissioner of Customs, No.1, Williams Road,
Truchirapalli - 620 001

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
TCP-CUS-000-APP-056-20 dated 20.07.2020
[C24/69/2019-TRY(CUS)] passed by the Commissioner of
GST, Service Tax & C.Ex (Appeals), Trichy - 620 001.

ORDER

These two revision applications have been filed by Shri. Meenakshi Sundaram, (herein referred to as Applicant) against the Orders-in-Appeal Nos.

(i). TCP-CUS-000-APPELLANTS-066-17 [A.No. C24/113/2016 -TRY(CUS)] dated 30.10.2017 passed by the Commissioner of Central Excise (Appeals-II), Trichirappalli - 620 001. &

(ii). TCP-CUS-000-APP-056-20 dated 20.07.2020 [C24/69/2019-TRY(CUS)] passed by the Commissioner of GST, Service Tax & C.Ex (Appeals), Trichy - 620 001.

Revision Application : F.No. : 373/200/B/2018-RA

2. Briefly stated the facts of the case are that the Applicant was intercepted at the Trichy Airport on 27.10.2015 while he was exiting the green channel. The applicant had arrived from Kuala Lumpur by Air Asia Flight No. AK-29 and had filed a nil Customs Declaration Form for possession of any dutiable goods. To the query whether he was carrying any dutiable goods or contraband on his person or in his baggage, the applicant had replied in the negative. A personal search of the applicant led to the recovery of two unfinished bracelets worn under the full sleeve shirt and another unfinished crude bracelet was concealed in his innerwear. Thus, in total, 762.900 grams of gold of 22 carats purity and valued at Rs. 19,28,611/- was recovered from the applicant. In his voluntary statement, the applicant had confessed that he had not declared the gold items to the Customs with an intention to evade payment of duty. Verification of the passport revealed that the applicant was a frequent traveler and had not stayed abroad for a period of six months, thus making him ineligible to bring gold items.

3. The Original Adjudicating Authority i.e. Jt. Commr. Of Customs, Trichy, vide Order-In-Original No. TCP-CUS-PRV-JTC-068-16 dated 29.06.2016 [C.No. VIII/10/202/2015 CUS Adj] ordered for absolute confiscation of the impugned gold under Section 111 (d), (j), (l) & (m) of the Customs Act, 1962 and penalty of Rs. 4,00,000/- was imposed on the Applicant under Section 112 (a) & (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority viz, Commissioner of Central Excise (Appeals-II), Trichirappalli - 620 001 who vide Order-In-Appeal No. TCP-CUS-000-APPELLANTS-066-17 [A.No. C24/113/2016 -TRY(CUS) dated 30.10.2017 upheld the absolute confiscation of the impugned gold and reduced the penalty to Rs. 2,00,000/- imposed under Section 112 (a) and (b) of the Customs Act, 1962.

5. Aggrieved with the above order, the Applicant has filed this revision application on the following grounds;

5.1. that in the OIO the absolute confiscation of the gold has been ordered whereas, in the SCN only a proposal to confiscate the gold had been made. The OIO has wrongly gone beyond the scope of the SCN and also, the appellate authority had passed an order in a mechanical manner without examining this issue and proper application of mind.

5.2 that the appellate authority had erred in not permitting redemption of the impugned gold. Under Section 125 of the Customs Act, 1962, it was mandatory for the appellate authority to allow redemption of the impugned goods. That gold was a restricted item and not prohibited.

5.3. that discretionary powers granted to the appellate authority should have been used. Reason for not allowing the redemption of the impugned gold had not been given by the lower authorities.

5.4. that though the applicant had not completed 6 months stay abroad, his Uncle who was the actual owner of the impugned gold had completed such stay overseas and was eligible to bring the gold.

5.5. that there was no legal requirement to declare the gold in the Customs declaration form. That the appellate authority had erred in holding that merely because the goods had not been declared in terms of Section 77 of the Customs Act, 1962, it amounted to smuggling.

5.6. that invoking Section 123 of the Customs Act, 1962 was not proper.

5.7. that no penalty can be levied as gold was not a prohibited item.

5.8. that the applicant has relied on a few case laws to buttress their case.

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside the order passed by the appellate authority or grant any relief as deemed fit.

Revision Application : F.No. : 373/199/B/2020-RA

6. Briefly stated facts of the case are that the on 13.08.2018, Customs at Trichy Airport intercepted the applicant who was bound for Kuala Lumpur by Air Asia Flight No. AK22 after he had crossed the Customs Counter. He was questioned about possession of any foreign currency, and the applicant had replied in the negative. Examination of his hand baggage resulted in the recovery of assorted foreign currencies of various denomination equivalent to INR 4,03,256/-. Since, the applicant had not declared the foreign currency to the Customs nor was he in possession of any valid documents / license / permit for the legal export of the foreign currency, the same were seized for further action.

6.1. The details of the seized foreign currency are as under;

Sr. No.	Currency Type	Denomination	Qty.	F.C value	Exch. Rate	Value in INR.
1	US Dollars	100	22	2200	67.55	1,48,610/-
2	Malaysian Ringits	100	97	9700	16.92	1,64,124/-
3		50	102	5100		86,292/-
4		20	11	220		3,722/-
5		10	3	30		508
					TOTAL	4,03,256/-

7. The Original Adjudicating Authority i.e. Asst. Commr. Of Customs (Preventive), Trichy - 620 007 vide Order-in-Original No. 171/2019 [C.No. VIII/10/301/2018-Cus.Airport /O.R.No. 156/2018-AIU, TRY] dated 09.05.2019, ordered the absolute confiscation of the seized foreign currency equivalent to INR. 4,03,256/- under Section 113(d), & (e) of the Customs Act, 1962 read with Section 3 & 4 of the Foreign Exchange Management Act, 1999 and Regulations no. 5 & 7 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2015 and imposed a penalty of Rs. 40,500/- on the applicant under Section 114 of the Customs Act, 1962.

8. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority i.e. Commissioner of GST, Service Tax & C.Ex (Appeals), Trichy – 620 001 who vide Order-In-Appeal No. TCP-CUS-000-APP-056-20 dated 20.07.2020 [C24/69/2019-TRY(CUS)] rejected the appeal.

9. Aggrieved with the above order, the Applicant has filed this revision application on the following grounds;

9.1. that the foreign currency had not been concealed and was kept in the hand baggage.

9.2. that he is a businessman was the owner of the foreign currency; that foreign currency was not a prohibited item.

9.3. that the permissible limit was exceeded marginally.

9.4. that the option to release the goods should have been given to him.

9.5. that the order passed by the appellate authority was bad in law.

9.6. that they have cited a few case laws to buttress their case.

Considering the circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside orders of the lower authorities and grant full relief and set aside the personal penalty of Rs. 40,500/- and a lenient view be taken.

10. Personal hearings in the Revision Application (RA) no. 373/200/B/2018-RA and 373/199/B/2020-RA through the video conferencing mode were scheduled online for 03.12.2021 and 09.12.2021. Shri. A Selvaraj, Advocate for the applicant, appeared online and reiterated his submissions. He requested to consider their application and allow redemption of goods on reasonable RF and penalty.

11. Government has examined both the Revision Applications and notes that the Applicant in both the cases is one and the same person, as the father's name viz Baluchamy Chettiar is the same in both the RA's i.e. 373/200/B/2018-RA & 373/199/B/2020-RA. Also, the address in both the RA's is the same. The

Government notes that the applicant is a repeat / habitual offender and in the first instance i.e (373/200/B/2018-RA), had attempted to smuggle gold by resorting to concealment with an intention to evade payment of Customs duty and on the second case (i.e. 373/199/B/2020-RA) had attempted to smuggle out foreign currency out of India.

11.1. In RA no. 373/200/B/2018-RA, the applicant has filed for condonation of delay alleging that the OIA dated 30.10.2017 had been received by them vide a communication dated 18.04.2018. In the records, rebuttal of the department to this claim made by the applicant is not available. In the absence of a counter-reply of the department, the Government accepts the request of condonation of delay.

12. In RA no. 373/200/B/2018-RA, the Government has gone through the facts of the case. The applicant had brought 3 unfinished gold bracelets (2+1) which were crude in form. Also, the applicant had been queried about possession of dutiable goods and had replied in the negative. Further, applicant had filed a 'Nil' Customs declaration form for possession of any dutiable goods. A declaration was required under section 77 of the Customs Act, 1962 and a true declaration had not been submitted, therefore the confiscation of the impugned gold was justified.

13. In RA no. 373/199/B/2020, Government finds that there is no dispute that the seized foreign currency was not declared by the Applicant to the Customs at the point of departure. The applicant was unable to give the source of how he came in possession of the foreign currency and did not possess any valid and licit documents for its procurement. The source of foreign currency had remained unaccounted. Applicant was unable to show that the impugned foreign currency in his possession was procured from authorized persons as specified under FEMA. Thus, it has been rightly held by the lower adjudicating authority that in the absence of any valid document for the possession of the foreign currency, the same had been procured from persons other than authorized persons as specified under FEMA, which makes the goods liable for confiscation in view of the prohibition imposed in Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 which prohibits export and

import of the foreign currency without the general or special permission of the Reserve Bank of India. Therefore, the absolute confiscation of the foreign currency was justified as no declaration as required under section 77 of the Customs Act, 1962 had been filed.

13(a). Also, the Government finds that the Applicant had not taken any general or special permission of the RBI to carry the foreign currency and had attempted to take it out of the country without declaring the same to Customs at the point of departure. Hence, the Government finds that the conclusions arrived at by the lower adjudicating authority that the said provisions of the Foreign Exchange Management (Export & Import of Currency) Regulations, 2000 have been violated by the applicant is correct and therefore, the confiscation of the foreign currency ordered, is justified. In doing so, the Government finds that the lower adjudicating authority had applied the ratio of the judgement of the Apex Court in the case of Sheikh Mohd. Umar v/s. Commissioner of Customs, Calcutta [1983(13) ELT 1439 (SC)] wherein it is held that non-fulfilment of the restrictions imposed would bring the goods with the scope of "prohibited goods".

14. In RA no. 373/200/B/2018-RA, which pertain to the confiscation of impugned gold, the Government observes the following;

14(a). The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s P. Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia v. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423 (S.C.), has held that " *if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited*

goods.” It is thus 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”.

14(b). Further, in para 47 of the said case the Hon’ble High Court has observed *”Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....”*. Thus failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold “prohibited” and therefore liable for confiscation and the ‘Applicant’ thus liable for penalty.

14(c). Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon’ble Supreme Court in case of *M/s. Raj Grow Impex [CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021]* has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

71. Thus, 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; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness, rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.

71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.

14(d). The Government notes that subsequently, the applicant was involved in another case of an attempt to smuggle out foreign currency from the country. Government notes that the applicant does not show any respect for the law of the land and is a conscious repeat /habitual offender. The quantum of gold brought by the applicant was quite substantial and the fact that the same was in crude form indicates that the impugned gold was for commercial use. Government also notes that the applicant is a carrier, indulging in smuggling of gold for monetary consideration. Government notes that the applicant is a frequent traveller and is aware of the law. The applicant tried to avoid detection by mis-declaration and attempted to smuggle the gold into the country. For the aforesaid reasons, Government is not inclined to release the gold on payment of redemption fine which will act as a deterrent to others harbouring similar intention to mis-declare and evade Customs duty.

14(e). The Government finds that the reduced penalty of Rs. 2,00,000/- imposed on the applicant under Section 112(a) of the Customs Act, 1962 is commensurate with the omissions and commissions committed. Government is not inclined to interfere in the same.

14(f). For the aforesaid reasons, the Government is inclined to reject the revision application no. 373/200/B/2018-RA filed by the applicant.

15. In RA no. 373/199/B/2020-RA, which pertains to the confiscation of impugned foreign currency,

15(a). Government finds that the case of Commissioner of Customs v/s. Savier Poonolly [2014(310 E.L.T. 231 (Mad)] is squarely applicable in this case. Government relies upon the conclusions drawn at paras 10 to 12 of the said case.

10. On facts, there appears to be no dispute that the foreign currency was attempted to be exported by the first respondent - passenger (since deceased) without declaring the same to the Customs Department and therefore, it resulted in seizure.

11. Regulation 5 of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000 prohibits export and import of foreign currency without the general or special permission of the Reserve Bank of India. Regulation 7 deals with Export of foreign

exchange and currency notes. It is relevant to extract both the Regulations, which are as follows :

5. **"Prohibition on export and import of foreign currency. -** Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or import or bring into India, any foreign currency.

7. **Export of foreign exchange and currency notes. -**

(1) An authorized person may send out of India foreign currency acquired in normal course of business.

(2) any person may take or send out of India, -

(i) chequ
es drawn on foreign currency account maintained in accordance with Foreign Exchange Management (Foreign Currency Accounts by a Person Resident in India) Regulations, 2000;

(ii) foreig
n exchange obtained by him by drawal from an authorized person in accordance with the provisions of the Act or the rules or regulations or directions made or issued thereunder

.....
12. Section 113 of the Customs Act imposes certain prohibition and it includes foreign exchange. In the present case, the jurisdiction Authority has invoked Section 113(d), (e) and (h) of the Customs Act together with Foreign Exchange Management (Export & Import of Currency) Regulations, 2000, framed under Foreign Exchange Management Act, 1999. Section 2(22)(d) of the Customs Act, defines "goods" to include currency and negotiable instruments, which is corresponding to Section 2(h) of the FEMA. Consequently, the foreign currency in question, attempted to be exported contrary to the prohibition without there being a special or general permission by the Reserve Bank of India was held to be liable for confiscation. The Department contends that the foreign currency which has been obtained by the passenger otherwise through an authorized person is liable for confiscation on that score also.

15(b). Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. Hon'ble Supreme Court in case of M/s. Raj Grow Impex has laid down the conditions and circumstances under which such discretion can be used. The same is reproduced at para 14(c) above.

15(c). The impugned foreign currency attempted to be smuggled out of the country was not huge, but the Government notes that the applicant on an earlier occasion had attempted to smuggle in gold into the country and had been detected. Government notes that the applicant is a conscious repeat /habitual offender. Even after having been detected for attempt to smuggle gold into the country, the Government notes that the applicant had not been deterred from carrying the impugned foreign currency out of the country. Government notes that the demeanour exhibited by the applicant displays a contumacious behaviour towards the law of the country. The applicant tried to avoid detection by mis-declaration and attempted to smuggle foreign currency out of the country. For the aforesaid reasons, the Government is not

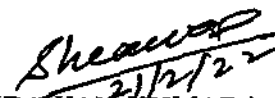
inclined to interfere in the order of absolute confiscation passed by the appellate authority.

15(d). The Government finds that the penalty of Rs. 40,500/- imposed on the applicant under Section 114 of the Customs Act, 1962 is commensurate with the omissions and commissions committed. Government is not inclined to interfere in the same.

15(e). For the aforesaid reasons, the Government is inclined to reject the revision application no. 373/199/B/2020-RA filed by the applicant.

16. Being a conscious repeat / habitual offender, the actions of the applicant in both the revision applications does not deserve any leniency. Government in the interest of justice, finds that upholding the aforesaid two orders of the appellate authority would act as a deterrent to such carriers / habitual offenders and in the given circumstances, the Government is inclined to reject the revision application no. 373/200/B/2018-RA and 373/199/B/2020-RA filed by the applicant.

17. For the aforesaid reasons, both the Revision Applications (i.e. F. Nos. 373/200/B/2018-RA & 373/199/B/2020-RA) are dismissed.


(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. \0\ - \02\ /2022-CUS (SZ) /ASRA/ DATED 2\ .02.2022

To,

1. Shri. Meenakshi Sundaram, S/o. Balusamy Chettiar, No. 6/4C/32, Thiyagarajar College Lane, West St., Theppalulam, Maduri City, Tamil Nadu - 625 009.
1. Commissioner of Customs, No.1, Williams Road, Truchirapalli - 620 001.

Copy to:

1. Shri. A. Selvaraj, Advocate / Consultant, 68, Krishnamurthynagar, Tiruchirapalli - 620 0021.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.