

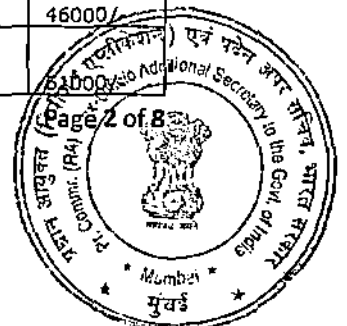
ORDER

These revision applications have been filed by the Commissioner of Customs, Trichirappalli (herein referred to as Applicant department) against the orders in Appeal passed by the Customs & Central Excise, (Appeals-II), Trichirappalli.

2. All the above mentioned Revision Applications pertain to gold jewellery attempted to be imported without declaration. Since the issue involved is similar in all these cases, these cases are taken up together for a common disposal. Briefly stated facts of the case are that the Officers of Customs, Airport, Trichy intercepted the respondents, S/Shri K. Murugesan, S. Kannan, C. Kamaraj, K. Ramesh, Velusamy, Ramachandran, A. Sivabalan, Hakeem Seit, Velliammal, Vinod Kumar, R. Marudhapandian, G. Selvam at the Trichy International airport. Examination of their baggage and person resulted in the recovery of gold jewelry as detailed in the table below. The respondents had not declared the gold jewelry at the time of their arrival.

3. After due process of the law the Original Adjudicating Authority ordered absolute confiscation of the gold jewelry and imposed penalty on each of the respondents, as detailed below.

	File No.	Applicant Name	Order-In-Original No.	Jewelry in Grams	Value in Rs.	Penalty imposed
1	380/133/B/16 -RA	K.Murugesan	462/2015 dated 10.10.2015	93.4	2,27,366/ -	23000/-
2	380/136/B/16 -RA	S.Kannan	525/2015 dated 04.11.2015	67.40	1,64,291/ -	17000/-
3	380/137/B/16 -RA	C.Kamaraj	461/2015 dated 10.10.2015	88.00	2,14,220	21500/-
4	380/138/B/16 -RA	K.Ramesh	493/2015 dated 22.10.2015	80	1,99,710/ -	20000/-
5	380/139/B/16 -RA	Velusamy	319/2015 dated 29.07.2015	119.8	2,71,843/ -	27500/-
6	380/140/B/16 -RA	Ramachandran	391/15 dated 08.09.2015	99.00	2,44,210/ -	24500/-
7	380/141/B/16 -RA	A. Sivabalan	392/2015 Dated 8.09.15	200	4,93,353/ -	50000
8	380/142/B/16 -RA	Hakeem Seit	331/2015 dated 09.08.2015	100	2,27,799/ -	23000/-
9	380/143/B/16 -RA	Vellaiammal	590/2015 dated 18.12.2015	200	4,66,368/ -	47000/-
10	380/144/B/16 -RA	Vinod Kumar	581/15 dated 09.12.2015	149.8	3,46,547/ -	46000/-
11	380/151/B16- RA	R. Marudhapandia n	314/2015 dated 25.07.2015	127	3,38,836/ -	



1	380/153/B/16		378/15 dated		2,46,677/	
2	-RA	G.Selvam	04.09.2015	100	-	25000/-

4. Aggrieved by this order the Respondents filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his orders C. Cus-I No. 583 & 584/2015 dated 28.09.2015 set aside the absolute confiscation of the Original Adjudicating Authority and allowed redemption of the jewelry on payment of a redemption fine as per the table below,

Sr. No	Applicant Name	Order-In Appeal Nos TCP-CUS-000-APP	Jewelry Gold in Grams	Value in Rs.	Redemption Fine	Penalty in Rs.
1	K. Murugesan	111-16 dated 02.06.2016	93.40	2,27,366/-	1,00,000/-	23,000/-
2	S.Kannan	108-16 dated 02.06.2016	67.40	1,64,291/-	50,000/-	17,000/-
3	C.Kamaraj	113-16 dated 02.06.2016	88.00	2,14,220/-	1,00,000/-	21,500/-
4	K.Ramesh	037-16 dated 08.03.2016	80.00	1,99,710/-	75,000/-	20,000/-
5	Velusamy	040-16 dated 09.03.2016	119.80	2,71,843/-	1,00,000/-	27,500/-
6	Ramachandran	041-16 dated 08.03.2016	99.00	2,44,210/-	90,000/-	24,500/-
7	A. Sivabalan	046-16 dated 09.03.2016	200	4,93,353/-	1,90,000/-	50,000/-
8	Hakeem Seit	047-16 dated 09.03.2016	100	2,27,799/-	80,000/-	23,000/-
9	Vellaiammal	049-16 dated 09.03.2016	200	4,66,368	1,80,000/-	47,000/-
10	Vinod Kumar	051-16 dated 09.03.2016	149.8	3,46,547/-	1,20,000/-	46,000/-
11	R. Marudhapandian	045-16 dated 09.03.2016	127	3,38,836/-	1,30,000/-	33,000/-
12	G.Selvam	061-16 dated 04.04.2016	100	2,46,677/-	75,000/-	25,000/-

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



5.1 That the gold brought by the passenger is not their bona fide baggage; that they carried the gold of someone else for monetary consideration; that they did not declare the gold in the Indian Customs Declaration form under section 77 with the intention to evade payment of Custom Duty. All these reasons as agreed by the Commissioner (Appeals) make the gold brought by the passenger prohibited.

5.2 Over riding the above vital reasons the Commissioner (Appeals) has exercised her discretion under section 125 to release the gold to the passenger on payment of duty, RF and penalty. It is seen from section 125 of Customs Act that in case of goods which are not prohibited an option to redeem has to be given. In case of prohibited goods the word may is used in the Act giving discretionary power to the adjudicating authority. In the present case the seized gold has been held as prohibited by the Commissioner (Appeals) in her order and for exercising the option to redeem the prohibited gold the Commissioner (Appeal) has relied on the reasons that, no concealment was noticed and mere non declaration cannot make the said gold liable for absolute confiscation.

5.3 It may be noted that the period of stay has no significance as long as the gold brought by the passenger did not belong to him and he had not procured the same by using his own money earned during his period of stay abroad. Further in this case the passenger himself has admitted that the gold brought did not belong to them, they had only carried the gold of someone else.

5.4 When the Customs officers enquired orally about possession of any gold in any form either in his baggage or in his person, the passengers had replied in negative. Only on repeated enquiries the Passengers admitted possession of the said gold jewelry carried by him. This is nothing, but concealment only. The concealment need not be in an ingenious way in every case.

5.5 The act of the passengers in not declaring the gold brought by them in the declaration form and their negative replies during oral interrogation proves their intention to clear the gold jewelry without payment of duty. Hence relying on the reasons of stayed abroad and that there was no concealment and mere non declaration cannot make the goods liable for absolute confiscation, Commissioner (Appeals) has incorrectly allowed for redeeming the gold.



5.6 In this regard the Honble High Court of Madras in the case of Commissioner of Customs (Chennai) Vs Samynathan Murugesan 2009 (247) ELT 21 (Madras) has upheld the absolute confiscation as the gold was brought by ineligible passenger coupled with concealment. This has been upheld by the Hon'ble Supreme Court in 2010 (254) ELT A15 (SC). 5 (SC) Further in the case of Abdul Razak Vs Union of India 2012 (275) ELT 300 Kerala, it was held that the passenger cannot claim release of gold on payment of duty, Redemption fine and penalty as a matter of right.

5.7 It may also be appreciated here that the discretion of the adjudicating / appellate authorities under sec. 125 is not an absolute discretion. It has to be exercised only based on the facts and circumstances of the case and in the present case it is felt that the Commissioner (Appeals) discretion has not been exercised judiciously. Hence the order of the Commissioner (Appeal) to release the gold is not proper and legal. The decision of the original adjudicating authority not to release the gold to the passenger is proper and legal.

The Revision Applicant prayed that in view of the above, it appears that the Commissioner (Appeals) erred in modifying the Order in Original passed by the Assistant Commissioner of Customs (Airport), Trichy considering the facts and circumstances of the case.

6. In view of the above, personal hearings in the case were scheduled on various dates. Due to change in the Revisional authority, personal hearings were again rescheduled on several dates such as on 08.12.2020, 15.12.2020, 22.12.2020 and on 25.02.2021. However, neither the Applicant department nor the Respondents attended the said hearings. Under the circumstances the cases are taken up for a decision based on available records on merits.

7. The Government has gone through the case records. It is observed that in all the cases the respondents did not declare the gold jewelry as required under section 77 of the Customs, Act, 1962. Non-declaration of the gold jewelry and attempt to escape from the law without payment of duty or appropriate account of the gold jewelry makes it liable to confiscation. Therefore the confiscation of the gold jewelry in all the impugned cases is justified.



8.1 The Applicant department has contended that the period of stay has no relevance as long as the gold brought by the passenger did not belong to him. The Government however opines that the period of stay is a specific condition which defines whether a passenger is allowed import of gold. Thus a passenger coming to India after six months becomes eligible passenger as per Notification No. 12/2012 dated 17.03.2012.

8.2 Section 125 of the Customs Act, 1962 allows confiscated goods to be given to the person from whose custody such goods have been seized. The impugned gold in all the above mentioned cases was in jewelry form. The gold was carried by the respondents on their person and there are no allegations that the gold jewelry was ingeniously concealed. The quantity of gold jewelry under import is small. There are no allegations that the respondents are habitual offenders and were involved in similar offences earlier. The facts of all these cases indicate that these are cases of non declaration of gold jewelry, rather than cases of smuggling for commercial considerations. Under the circumstances, the decision not to release the gold to the respondent would be harsh and unjustified.

9.1 Further, in the case Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.), The Apex Court has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. In the case of Shaikh Jamal Basha V/s Government of India while allowing the Writ Petition The Hon'ble High Court of Andhra Pradesh reported in 1997 (91)ELT 277 (A.P.) has observed that "*Section 125 of the ACT leaves option to the officer to grant the benefit or not so far as goods whose import is prohibited but no such option is available in respect of goods which can be imported, but because the method of importation adopted, become liable for confiscation.*" In the case of Union of India v/s. Dhanak M Ramji- 2009 (248) ELT 127 (Bom) upheld by Supreme Court, The High Court of Bombay upheld release of absolutely confiscated goods on redemption fine by Tribunal, holding that "*Section 125 (1) of the Customs Act, 1962 provides that where the owner of the confiscated goods is not known, the person from whose custody such goods have been seized is entitled to redeem the goods and it is irrelevant as to whether the person had established the title over the goods or not.*"



9.2 The Applicant departments reliance on the case of Commissioner of Customs (Chennai) Vs Samynathan Murugesan 2009 (247) ELT 21 (Madras) and Abdul Razak Vs Union of India 2012 (275) ELT 300 Kerala, is not relevant as in the Samynathan Murugesan case the gold was ingeniously concealed in a TV set and in the second case the impugned gold was ingeniously concealed in emergency lights, mixie, grinder and car horns, etc. Gold in both these cases was in primary form and in commercial quantity unlike gold jewelry in minor quantity in the present cases. Therefore facts of both cases are clearly distinguished from instant cases.

10. The Appellate Authority, while rejecting the contentions of the revenue, correctly noted the above legal position, and has exercised discretion in favour of allowing redemption of the seized gold jewelry, on payment of redemption fine. Government also notes that the Appellate Authority has given specific reasons justifying the redemption of the gold jewelry in each of the cases. Government is entirely in agreement with the orders of the Commissioner (Appeals). 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 motives. The redemption fines imposed are appropriate in each of the cases and Government does not find enough grounds to differ with the above findings of the Appellate authority in each of these cases. Government therefore opines that the Order in Appeal in each of these cases do not warrant any interference. The impugned Orders in Appeal are all therefore liable to be upheld, and the Revision Applications liable to be dismissed.

11. The impugned Revision applications are accordingly dismissed.



Shrawan
31/03/21
(SHRAWAN KUMAR)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

104-115
ORDER No. /2021-CUS (SZ) /ASRA/

DATED 31.03.2021

ATTESTED

To,

- The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.

[Signature]
अधीक्षक

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रिडीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai

2. Shri K.Murugesan, S/o Karuppan, No. 6/105, Kulaiyiruppa Kanmai, Sayalkudi Post, Ramanathapuram.
3. S.Kannan, S/O Shri Subramanium, Pinaiyan Street, Pushupati Koclanilai, P.O. Thirumayan, Tk Pudukottai- 622 202.
4. C.Kamaraj, S/o Shri Chellam, Adhidravidar Street, No. Koviluir, Orthandu (TK), Thanjavur- 614 625.
5. K.Ramesh, S/o Shri Kuttain, No. 95 A, Thiruvalluvar Nagar, Kothamangalam, Karaikudi Sivasagangai - 630105.
6. Velusamy, S/o Soliyappan, No. .53, Valaiyappatti, Bethlegam Koviloor, Sivakasi (YK), Virudhunagar- 626114.
7. Ramachandran, S/o Shri P. Ganapathy, 117A, West Alangam, Thanjavur, -613 009.
8. A. Sivabalan, C/o Shri Manokaran, No. 24/2, Vinayagam Pettai Street, Saidapet, Chennai- 600 015.
9. Hakeem Seit, No. 13/44, Seethakathi South Melur, (PO & TK), Madurai - 625 102.
10. Vellaiammal, No. 568(2), Ambalakaratheru, Kadavettivuduthi Manikiranviduthi, Thanjavur -614 614.
11. Vinod Kumar, No. 2/129-2/77, North Street, V. Kumaramangalam, Go Adhanur, Virudhachalam, Cuddalore Dist- 600 003.
12. R. Marudhapandian, No. 4, Melatheru Ward No. 2, Kadantha Pattukottai, Thanjavur, Tamilnadu - 614903.
13. G.Selvam, 4/26, Kunjukatha, Sevanthankadu, Marudhur South, - PO, Vedaranya, Tal Nagapattinam, Tamilnadu -614 714.

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