

REGISTERED  
SPEED POST



सत्यमेव जयते

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

---

F.No. 373/146/B/2019-RA /160 : Date of Issue : 05.05.2022

---

ORDER NO. 144/2022 CUS (WZ/SZ)/ASRA/MUMBAI DATED 27.04.2022  
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.

---

**(i). F.No. 373/146/B/2019-RA**

(vii). Smt. Siddika. (Smt. N. Kusma Maknoon Noorwan Siddika)

Respondent : Commissioner of Customs (Preventive), No. 1 Williams Road,  
Cantonment, Tiruchirappalli – 620 001.

Subject : Revision Applications filed respectively, under Section 129DD  
of the Customs Act, 1962 against Orders-in-Appeal No. TCP-CUS-  
000-APP-043 dated 26.04.2019 [A.No. C24/07/2019-TRY(CUS)]  
passed by the Commissioner of GST, Service Tax & C.Ex.  
(Appeals), Trichirappalli – Pin : 620 001.

**ORDER**

This Revision application has been filed by Smt. Siddika, a Sri Lankan nation (hereinafter also referred to as Applicant) against the Order-in-Appeal No. TCP-CUS-000-APP-043-19 dated 26.04.2019 [A.No. C24/07/2019-TRY(CUS)] passed by the Commissioner of GST, Service Tax & C.Ex (Appeals), Trichirappalli – Pin : 620 001.

2(a). The brief facts of the case are that the Officers of DRI, Coimbatore had an intelligence that a group of passengers carrying gold would be coming from Colombo to Coimbatore on 15.10.2017 by Sri. Lankan Flight UL 193 and would be clearing it without declaring to Customs and without payment of any Customs Duty. In all 18 persons including the applicant who had come out from the green channel in Customs Area without declaring anything were intercepted. Search of these 18 passengers was carried out and in all 3272.200 gms of gold was recovered.

2(b). The details of the recovery of gold made from the aforesaid applicant is as under;

TABLE – 01.

S. No.	Name	Form of gold	Nos.	Quantity in gms	Purity	Qty of gold seized (gms)	Value in INR
1	Smt. Siddika	Chains	2	40.400	22 carats	40.400	1,15,140/-

3. Investigations carried out had revealed that the applicant who was a Sri Lankan national had brought the gold jewellery not for personal use but for trade purposes. The applicant was a frequent traveller and had been travelling 8 times in a month between Colombo and Coimbatore/Chennai / Bangalore / Mumbai; that previously she had already been apprehended at Coimbatore Airport on 09.10.2017 for carrying 230 grams of gold which had been seized by Customs.

4. After due process of the law, the Original Adjudicating Authority (OAA) viz Jt. Commissioner of Customs (Preventive), Trichy vide a single Order-in-Original No.

TCP-CUS-PRV-JTC-126-18 dated 02.11.2018 [C.No. VIII/10/93/2018-Cus.Adj], ordered for the absolute confiscation of the entire aforesaid quantity of gold viz 3272.200 grams valued at Rs. 94,95,545/- under Section 111(d) and 111(i) of the Customs Act, 1962 . The details of the penalty imposed on the applicant is as given at Table-02, below.

TABLE No. 2

Sr. No.	Name	Quantity of gold seized (in gms).	Value in Rs.	Penalty imposed u/s 112 of C.A. 1962 in Rs.
1	Smt. Siddika	40.400	1,15,140/-	10,000/-

5. Aggrieved by this order, the Applicant filed an appeal with the Appellate Authority (AA) viz, Commissioner of GST, Service Tax & C.Ex, Trichirappalli – Pin : 620 001 who vide Order-in-Appeal No. TCP-CUS-000-APP-043-19 dated 26.04.2019 [A.No. C24/07/2019-TRY(CUS)] upheld the order passed by the Original Adjudicating Authority and rejected the Appeals.

6. Aggrieved with the above order, the Applicant has filed this revision applications, inter alia on the following grounds;

- 6.01. Order of the AA is against law, weight of evidence and circumstances and probabilities of the case; that an order to re-export the seized gold jewellery under Section 80 of the Customs Act 1962, ought to have been passed; that gold was not a prohibited item and as per the liberalized policy it ought to have been released on payment of redemption fine and baggage duty.
- 6.02. that the AA glossed over all the judgments and points raised in the grounds of appeal and no reason had been given to reject their appeals; that the AA had failed to apply his mind and hence the order is liable to be set aside.
- 6.03. that CESTAT Bangalore has passed an order in C/21257/2018-S.M. dated 01.01.2019- Final Order No. 20020-20021/2019- Smt. Abitha Tahillainathan & Smt. Kirthucase Mary Thawamani v/s. Commissioner of Customs, Cochin, Kerala, to re- export the gold jewellery citing that gold jewellery recovered from person is personal belonging and the same is not covered under the baggage rules.
- 6.04. that the government of India approved gold appraiser had observed that the gold was not fully finished and it looked as if it were used.

- 6.05. that the gold was owned by the applicant and it had not been ingeniously concealed; that gold jewellery was not in commercial quantity and had been purchased at Sri Lanka out of her personal savings;
- 6.06. that no declaration card had been provided at Airport either by Customs or by any other agency.
- 6.07. that in the case cited i.e. Madras High Court judgement in CC Chennai Samynathan Murugesan, passenger was of Indian origin and 7.075 kgs of gold had been concealed in the T.V. set and ratio of this case was not applicable to their case.
- 6.08. that applicants were foreign nationals and being tourist, she was not aware of Indian law and should have been educated by the officers to file a declaration as per Circular issued by the Board.
- 6.09. that because the applicant had not filed a declaration, the department cannot become owners of the gold and option under Section 125 of the Customs Act, 1962 should have been given.
- 6.10. that in O-i-O no. 161 to 164 dated 10.03.2012, Sri Lankan nationals viz (i). Mohamed Ansar, (ii). H.M Naushad, (iii). Seiyed Faizan Mohamed, (iv). Mohamed Rafeek and (v). Imtiyas Mohammed, the Commissioner of Customs (Appeals) had released the gold on payment of redemption fine; that Revision Authority, New Delhi had confirmed the order dated 31.07.2012.
- 6.11. that a combined show cause notice had been issued for reasons best known to the department; this is non-application of mind.
- 6.12. that the provisions of law mentioned in the show cause notice was not applicable to the applicant; that the Hon'ble Supreme Court had observed that main object of department was to collect duty and not to punish the person.
- 6.13. that gold was dutiable goods and not prohibited under the Customs Act, 1962; that gold was restricted item and not prohibited goods.
- 6.14. that as per CBEC letter F. NO. 495/3/94-Cus VI dated 2.3.1994. the ownership of gold was not a criterion for import of gold; that the gold receipts were in the name of the applicant.
- 6.15. that reliance on the judgment of the Hon'ble Supreme Court in the case of Om Prakash Bhatia and that of the Kerala High Court in Abdul Razak's case and the Supreme Court in Shaik Mohammed Omer were all misconceived and each of these judgments were distinguishable on the facts.

- 6.16. the gold under seizure not being prohibited, option of redemption in terms of Section 125 of the Customs Act, 1962 was mandatory; the order of absolute confiscation was erroneous and requires be set aside / modified.
- 6.17. that the applicant further submits that as per Circular F. no. 201/01/2014-CX.6 of Government of India, Ministry of Finance, Department of Revenue, CBEC, New Delhi dated 26.06.2016 it is categorically directed that binding precedent should be followed to avoid unnecessary litigation and adverse observations of the Courts should be avoided.
- 6.18. that the Hon'ble Supreme Court (full bench) in OM Prakash case Vs UOI has categorically stated that the main object of the enactment of the said act was the recovery of excise duties and not really to punish for infringement of its provisions.
- 6.19. The applicant has cited the following case laws to buttress their case,
- (i). The Commissioner (Appeals), Cochin, F. NO. C27/243,252 & 255/Air/2013 AU CUS in OS. NO. 370, 349, 364/2013 dated 18.12.2014, Shri. Hamsa Mohideen Mohammed Shajahan Srilanka, Rismila Begam Samsudeen Arip and Hussain Samsudeen Farhan
  - (ii). Commissioner of Customs (Appeals), Chennai, Order in C4 1/35/0/2017 in C. Cus No. 68 of 2017 dated 04.04.2017 in O in O No. 140/2016-in OS. NO. 849/2016 dated 19.11.2016- Smt. KAMALESWARI.
  - (iii). Supreme Court (full bench) judgment dated 30.09.2011 in OM Prakash vs UOI.
  - (iv). RA order no. 198/2010-CUS dated 20.05.2010 in F.NO. 375/14/8/2010-RA-CUS reported in 2011 (270) ELT 447 (GOI) MUKUADAM RAFIQUE AHMED.
  - (v). OS. NO. 517 OF 2011 Smt. HAMEETHA BEGAM passed by Additional Commissioner of Customs (Air), Chennai 05 No. 383/08 Air dated 29.05.2008 in C4/ 442/0/2008-AIR CCUS/423/2008 dated 30.10.2008
  - (vi). Shri VELU HARIHARAN (Sri Lankan, national) passed Ccustoms (Appeals); Chennai OS. No. 388/08 Air dated 29.05.2008 in C4/ 447/0/2008-AIR COUS/428/2008 dated 30.10.2008
  - (vii). Shri. MOHAMED SUBAI SIRAS MOHAMED (Sri Lankan, national) passed by Commissioner of Customs (Appeals), Chennai in OS. No 483/2012 Air dated 13.08.2012 in C4/ 747/0/2012-AIR COUS/549/2012 dated 20.05.2012

- (viii). Shri MOHAMED LAREEF (Sri Lankan national) passed by Commissioner of Customs (Appeals) Chennai in C4 1/35/0/2017 in C.Cus No 66 of 2017 dated 04.04.2017 in O in O No. 140/2016-in OS. NO. 849/2016 dated 19.11.2016 Smt. KAMALESWARI.
- (ix). Revision Authority Order in JABBAR ILYAS and others in F.No. 373/6, 8-11, 23-25, 28-29/8/07-RA ORDER NO. 212-221/07 DATED 27.04.2007
- (x). Revision Authority Order No. 380/57/8/16-RA/1015 dated 31.01.2018 ALMA ZAMBROSE Sri Lankan national.

Under the circumstances of the case, the applicants prayed to set aside the impugned order and permit her to re-export the jewellery on payment of nominal fine and penalty and to render justice,

8(a). Personal hearings in the case were scheduled through the video conferencing mode for 23.03.2022 / 30.03.2022. Smt. Kamalamalar Palanikumar, Advocate for the applicant appeared personally on 30.03.2022 and submitted a written submission. She stated that the applicant is a Sri Lankan national and was wearing minor quantity of gold jewellery; that there was no concealment. She requested to allow re-export on nominal RF and penalty.

8(b). In their written submission dated 30.03.2022 handed over during the personal hearing, the Advocate for the applicant reiterated that the gold jewellery was of 22 carats and was personal jewellery which was worn by the applicant; that the OAA had passed an order of absolute confiscation without excising option under section 125 of the Customs Act, 1962 and imposed the personal penalty; that Vigneswaran Sethuraman's case passed by Hon'ble High Court, Kerala is squarely applicable to her wherein it was held that wearing gold jewellery of 22 ct or 24 cts is not an offence and baggage rules was not applicable. The department is bound to accept and follow the order of the Hon'ble High Court of Kerala. She reiterated the submissions made in the grounds of revision and requested to re-export the gold.

9. Government has gone through the facts of the case. The Government notes that the Applicant had opted for the green channel and was intercepted after she had crossed the green channel while attempting to carry the gold jewellery /

chains etc without declaring the same to Customs. The applicant had admitted that she had not declared the gold with a view to evade the Customs duty. At the point of interception, the gold jewellery was in her hand bag. A declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore, the confiscation of the gold was justified.

10. At the outset, from the facts of the case, the Government notes that the applicant is a repeat offender. The Government observes that the Applicant is a habitual offender and was involved in a similar offence earlier. The facts of the case indicate that though it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations, the fact that the applicant was involved in a similar previous offence indicates that the applicant knew about the procedure and processes of declaration to be made at the time of arrival and it is clear that the applicant did not have any intention of declaring the gold in her possession and was deliberately attempting to evade payment of Customs duty. Under the circumstances, the seriousness of the misdemeanour / past offences were required to be kept in mind when using discretion under Section 125 of Customs Act, 1962 and while imposing quantum of penalty.

11. Section 125 of the Customs Act, 1962 leaves option 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 of the method of importation adopted become liable for confiscation. The Apex court in the case of Hargovind Das Vs Collector of Customs 1992 (61) ELT 172 (SC) and the several other cases has pronounced that a quasi judicial authority must exercise discretionary powers in a judicious manner and not in arbitrary manner. As per the provisions of Section 125 of the Customs Act, 1962, in case of goods which are prohibited the option of redemption is left to the discretionary power of the authority who is functioning as a quasi judicial authority and in cases of other goods, option to allow redemption is mandatory. In this case, considering that

the applicant was involved in similar offence in the past, the Government finds that the lower authorities were right and justified in holding absolute confiscation of the impugned gold.

12. 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.*

However, in this case as the applicant was involved in similar offence in the past, the lower authorities did not allow release of the gold on payment of redemption fine and the Government does not find any infirmity with the order passed.

13. The absolute confiscation of the small quantity of gold jewellery leading to dispossession of the Applicant generally appears harsh but the fact that applicant had a previous similar offence and had not declared the gold upon



arrival, displays mensrea on the part of the applicant and applicant being habitual offender, the lower authorities have ordered for absolute confiscation of the gold. The Government finds no infirmity in the order passed by the lower authorities.

14. On the issue of penalty under Section 112(a) of the Customs Act, the Government finds that the quantum of the penalty is commensurate with the omission and commissions committed by the applicant.

15. On the issue of re-export, the fact that absolute confiscation has been ordered, this plea of the applicant has become infructuous.

16. Revision Application is dismissed.

  
( SHRAWAN KUMAR )

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER NO. 144/2022 CUS (WZ/SZ)/ASRA/MUMBAI DATED 27.04.2022

To,

- 1). Smt. Siddika, (Smt. N. Kusma Maknoon Noorwan Siddika), 191 / 5, Mega Watta, Peleyagoda, Sri Lanka.
- 2). Commissioner of Customs (Preventive), No. 1 Williams Road, Cantonment, Tiruchirappalli - 620 001.

Copy to:

1. Smt. Kamalamalar Palanikumar, No. 10, Sunkurama Street, Second Floor, Chennai- 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.