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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. 373/43-48/B/2019-RA / 1591: Date of Issue : 05.05.2022

ORDER NO. <sup>14540150</sup> /2022 CUS (WZ/SZ)/ASRA/MUMBAI DATED <sup>28</sup> .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) to (vi). F. No. 373/43-48/B/2019-RA**

Applicants : (i). Smt. Nona Fareena,  
(ii). Smt. P.D Pushparanee,  
(iii). Smt. Vishaka Malkanthi Kaldera,  
(iv). Smt. Jayamary Wilma,  
(v). Smt. Malaweera Patabendise Kumari Seetha,  
(vi). Smt. Mary Rajeshwari Kandiah.

Respondents : 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 the following 6 Orders-in-  
Appeal No. TCP-CUS-000-APP-007 to 012 dated 31.01.2019  
[A.No. C24/149 to 154/2018-TRY(CUS)] passed by the  
Commissioner of GST, Service Tax & C.Ex. (Appeals),  
Trichirappalli – Pin : 620 001.

**ORDER**

There are 6 revision applications that have been taken up for a decision as these involved common facts. These six revision applications have been filed by (i). Smt. Nona Fareena, (ii). Smt. P.D Pushparanee, (iii). Smt. Vishaka Malkanthi Kaldera, (iv). Smt. Jayamary Wilma, (v). Smt. Malaweera Patabendise Kumari Seetha and (vi). Smt. Mary Rajeshwari Kandiah, all Sri Lankan nationals (herein referred to as the Applicants ) against the Orders-in-Appeal No. TCP-CUS-000-APP-007 to 012 dated 31.01.2019 [A.No. C24/149 to 154/2018-TRY(CUS)] passed by the Commissioner of GST, Service Tax & C.Ex (Appeals), Trichirappalli – Pin : 620 001 emanating out of Order-in-Original No. TCP-CUS-PRV-JTC-126-18 dated 02.11.2018 [C.No. VIII/10/93/2018-Cus.Adj] passed by Jt. Commissioner of Customs (Preventive), Trichy.

2. All the above mentioned 6 Revision Applications pertain to gold jewellery / gold chains etc attempted to be imported without declaration by the Applicants. Since, the issue involved is similar in all these cases and they were decided in a common Order-in-Original and Order-in-Appeal, therefore, these 6 cases are taken up together for a common disposal.

3(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 gold without declaring it to Customs and without payment of any Customs duty. In all 18 persons including the 6 applicants 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 were recovered.

3(b). The details of the recovery of gold made from the aforesaid 6 applicants are 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. Nona Fareena	Bracelet	1	93.600	22 carats	93.600	2,66,760/-
		Chain	1	54.000			
2.	Smt. Pushparanee	Ring	2	31.600	22 carats	309.100	8,88,835/-
		Bracelet	2	116.300			
		Dollar Chain	1	48.100			
		Flat Chain	1	55.600			
		Square Chain	1	57.500			
3.	Smt. V.M Kaldera	Dollar Chain	1	79.300	22 carats	79.300	2,26,005/-
4.	Smt. Jaya Mary Wilma	Chain	1	45.200	22 carats	151.100	4,30,635/-
		Chain with 3 dollars	1	105.900			
5.	Smt. M.P. Kumari Seetha	Ring	2	28.800	24 carats	28.800	89,280/-
6.	Mary Rajeshwary	Thali Chain	1	208.300	22 carats	273.200	7,78,620/-
		Ring	1	13.800			
		Bangles	3	51.100			
					<b>TOTAL</b>	<b>935.100</b>	<b>26,80,135/-</b>

4. Investigations carried out had revealed that all the applicants were Sri Lankan nationals and had brought the gold not for personal use but for trade purposes. All except applicant no. 6 were frequent travelers and none of them possessed any legal document for the same.

5. 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 under Section 111(d) and 111(i) of the Customs Act, 1962. The details of the penalty imposed on the applicants 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. Nona Fareena	93.600	2,66,760/-	25,000/-
2	Smt. Pushparanee	309.100	8,88,835/-	90,000/-
3	Smt. V.M Kaldera	79.300	2,26,005/-	20,000/-
4	Smt. Jaya Mary Wilma	151.100	4,30,635/-	40,000/-
5	Smt. M.P. Kumari Seetha	28.800	89,280/-	10,000/-
6	Mary Rajeshwary	273.200	7,78,620/-	80,000/-

6. Aggrieved by this order, the Applicants filed an appeal with the Appellate Authority (AA) viz, Commissioner of GST, Service Tax & C.Ex, Trichirappalli – Pin : 620 001 who vide a common Order-in-Appeal No. TCP-CUS-000-APP-007 to 012 dated 31.01.2019 [A.No. C24/149 to 154/2018-TRY(CUS)] upheld the order passed by the Original Adjudicating Authority and rejected the Appeals.

7. Aggrieved with the above order, the Applicants have filed these revision applications, inter alia on the following grounds;

7.01. 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.

7.02. 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.

7.03. 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, has passed an order 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.

7.04. The government of India approved gold appraiser had observed that the gold was not fully finished and it looked as if it were used.

7.05. that the gold was owned by the applicants and it had not been ingeniously concealed; that gold jewellery was not in commercial quantity and had been purchased at Sri Lanka out of their personal savings; that no previous offence had been registered against them.

7.06. that no declaration card had been provided at Airport either by Customs or by others. by neither by the customs authority nor by any other agency.

7.07. that in the case cited i.e. Madras High Court judgement in CC Chennai vs. Samynathan Murugesan, the 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.
- 7.08. that applicants were foreign nationals and being tourist they were not aware of Indian law and should have been educated by the officers to file a declaration as per the Circular issued by Board.
- 7.09. that because the applicants have 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.
- 7.10. 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 these orders dated 31.07.2012.
- 7.11. that a combined show cause notice had been issued for reasons best known to the department; this is non-application of mind.
- 7.12. that the provisions of law mentioned in the show cause notice was not applicable to the applicants; that the Hon'ble Supreme Court had observed that main object of department was to collect duty and not to punish the person.
- 7.13. that gold was dutiable goods and not prohibited under the Customs Act, 1962; that gold was restricted item and not prohibited goods.
- 7.14. 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 applicants.
- 7.15. 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 the judgment was distinguishable on the facts.
- 7.16. 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.
- 7.17. The appellant 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.

- 7.18. 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.
- 7.19. 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/549/2013 dated 20.03.2012
  - (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 ALTMA ZAMBROSE Sri Lankan national.

Under the circumstances of the case, the applicants prayed to set aside the impugned order and permit them 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 all the 6 aforesaid applicants appeared personally on 30.03.2022 and submitted a written submission. She stated that the gold jewellery was 22 carat and was worn in person by the Sri Lankan persons, quantity is small and for personal use. 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 six applicants reiterated that the gold jewellery was of 22 carats and was personal jewellery which was worn by them ; 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 them 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. They reiterated their submissions made in the grounds of appeal and requested to re-export the gold.

9. Government has gone through the facts of the case. The Government notes that the Applicants had opted for the green channel and were intercepted after they had crossed the green channel while attempting to carry the gold jewellery / gold chains etc without declaring the same to Customs. The applicants had admitted that they had not declared the gold with a view to evade the Customs duty. At the point of interception, the gold jewellery were in

their baggage. 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. Government observes that the lower authorities had not allowed redemption of the impugned gold. Government observes that 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".

11. 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 Applicants thus liable for penalty.

12. Section 125 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 even in prohibited goods. 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.*

13. From the facts of the case, the Government notes that the Respondent has not made out a case that this group belonged to a syndicate which was involved in smuggling of gold into the country. The quantum of gold found with the applicants is quite small and not of commercial quantity. Gold is predominantly in the form of jewellery of 22 carats. No case has been made out that the applicants are habitual offenders. Considering the quantum of gold carried individually and that the same had not been concealed in an ingenious manner, Government finds that this is a case of non-declaration of gold rather

than brazen smuggling. All the applicants are Sri Lankan nationals and were ineligible to bring gold and all have consistently and persistently prayed to allow them to re-export the gold.

14. The Government finds that the absolute confiscation of the gold, leading to dispossession of the Applicants of the gold in the instant case is harsh and not justified. From para nos 7,9,10,18,20 & 22 of the OIO, Government observes that during the investigations, the ornaments were found in their baggage. Government notes that the plea made by the applicants though consistent at all forums for re-export of the gold jewellery and reliance placed in the Hon'ble Kerala High Court case of Vigneswaran Sethuraman [2014 (308) ELT 394 (Ker)] allowing re-export would not be applicable for the applicants as the gold had not been worn by them and was found in their baggage after search of the same Hence, Government is not inclined to allow the re-export of the gold. However, considering that there was no ingenious concealment, that they are not habitual offenders, quantity being small; Government is inclined to allow the redemption of gold on payment of a fine.

15. Government finds that the penalty as mentioned at Table - 02 above, imposed on the applicants under Section 112 of the Customs Act, 1962 is commensurate with the omissions and commissions committed. Therefore, same is upheld.

16. In view of the above, the Government sets aside the impugned order of the Appellate Authority in respect of the impugned gold jewellery imported by the applicants as mentioned at Table-01 above and the same is allowed to be redeemed on payment of a redemption fine as mentioned at column no. 'f' of Table 03, below. The Government is not inclined to interfere in the penalty imposed on the applicants under Section 112 of the Customs Act,1962 and finds the same is commensurate with the omissions and commissions committed.

**TABLE No. 3.**

Redemption fine imposed as per col. 'f' below,

Sr. No.	Name	Quantity of gold seized (in gms).	Value in Rs.	Penalty imposed u/s 112 of C.A. 1962 in Rs.	Redemption fine imposed / levied.
(a)	(b)	(c)	(d)	(e)	(f)
1	Smt. Nona Fareena	93.600	2,66,760/-	25,000/-	60,000/-
2	Smt. Pushparanee	309.100	8,88,835/-	90,000/-	2,50,000/-
3	Smt. V.M Kaldera	79.300	2,26,005/-	20,000/-	50,000/-
4	Smt. Jaya Mary Wilma	151.100	4,30,635/-	40,000/-	1,00,000/-
5	Smt. M.P. Kumari Seetha	28.800	89,280/-	10,000/-	20,000/-
6	Mary Rajeshwary	273.200	7,78,620/-	80,000/-	2,00,000/-

17. The 6 Revision Applications are disposed of on the above terms.

*(Signature)*  
28/4/22  
(SHRAWAN KUMAR)

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

ORDER NO. <sup>14576150</sup> /2022 CUS (WZ/SZ)/ASRA/MUMBAI DATED 8.04.2022

To,

- 1). Smt. Nona Fareena, 360 / 9, Zumma Majid Road, Colomba - 10, Sri Lanka.
- 2). Smt. P.D Pushparanee, 4B / 84, Jayadwardangama, Battaramulla, Sri Lanka.
- 3). Smt. Vishaka Malkanthi Kaldera, 360 / 14, Mahar Nugegoda Kadawatha, Sri Lanka.
- 4). Smt. Jayamary Wilma, No. 15, Gurumana Kudi, (ST), Mondathur, Vaitheeswaram Koli, Nagapattinam, Dist- 609 112.
- 5). Smt. Malaweera Patabendise Kumari Seetha, 124 /14, Gurugewatth, Hekittawattia, Colombo, Sri Lanka.
- 6). Smt. Mary Rajeshwari Kandiah, 132 / 578, Grand Oassm, Colombo - 14, Sri Lanka.
- 7) 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.