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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 373/240-244/B/2018-RA / 392 Date of Issue 01.02.2022

ORDER NO. 18-22/2022 CUS (SZ)/ASRA/MUMBAI DATED 27.01.2022 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.

Applicants : (i). Shri. . A Jayakumar (ii). Shri. R. Karthik,
(iii). Shri. M. Muthusamy, (iv). Shri. B. Krishnamoorthi,
& (v). Shri. G. Gopalkrishnan.

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 5 Orders-in-Appeal No. TCP-CUS-000-APP-144 -148 dated 08.08.2018 [A.No. C24/84 to 88/2018-TRY(CUS) passed by the Commissioner of GST, Service Tax & C.Ex, Trichirappalli - Pin : 620 001.

ORDER

These revision applications have been filed by (i). Shri. A. Jayakumar, (ii). Shri. R. Karthik, (iii). Shri. M. Muthusamy, (iv). Shri. B. Krishnamoorthi and (v). Shri. G. Gopalkrishnan. (herein collectively referred to as the Applicants or as Applicant No. 1, Applicant No. 2Applicant No. 5, respectively) against the Orders-in-Appeal No. TCP-CUS-000-APP-144-148-18 dated 08.08.2018 [A.No. C24/84 to 88/2018-TRY(CUS) passed by the Commissioner of GST, Service Tax & C.Ex (Appeals), Trichirappalli – Pin : 620 001.

2. All the above mentioned 5 Revision Applications pertain to foreign marked gold bars in full or cut form, attempted to be imported without declaration by the Applicants. Since the issue involved is similar in all these cases, and they were decided with a common Order-in-Original and Order-in-Appeal, these cases are taken up together for a common disposal.

3.1. The brief facts of the case are that the Officers of DRI had an intelligence that a syndicate was indulging in smuggling of gold bars at Trichy Airport and were using some International passengers as carriers who would be bringing in gold by way of concealment to avoid payment of Customs duty. Some of the passengers who had arrived by Tiger Air, Flight No. 2664 / 29.05.2017 had already handed over the gold to the members of the syndicate who had been waiting in Toyota Innova Car bearing No. TN-11-Z-2651 parked in the parking bay of Trichy Airport.

3.2. Accordingly, the Innova Car no. TN-11-Z-2651 alongwith 3 persons in it, was intercepted at the parking bay at Trichy Airport. A search of the car led to the recovery of gold bars as mentioned at Table – 01, below and the occupants divulged that these gold bars in full and cut form had earlier been handed over by 4 persons who had arrived from Singapore by Tiger Air, Flight No 2664. Also, it was informed that another 4 persons (i.e. Applicants Nos. 1 to 4) were about to arrive from Singapore by Tiger Air Flight no. 2668.

3.3. Accordingly, these 4 persons i.e. Applicants No. 1 to 4 who had arrived from Singapore onboard Tiger Air Flight No. 2668 were intercepted while they were exiting through the green channel at Trichy Airport. These 4 applicants had not declared the possession of any dutiable or restricted goods to Customs and on enquiry about possession of any gold had declared in the negative. The detailed examination of their checked in baggage / hand baggage led to the recovery of gold bars as detailed at Table No. 02, below. The gold was contained in similar pouches which were placed in their hand baggages and these 4 applicants had revealed that the same had been given to them at Singapore to be handed over to the syndicate members who would be waiting outside Trichy Airport. These 4 applicants had revealed that the gold did not belong to them and they had carried the same for a monetary consideration.

3.4. Further, based on the disclosures made by the aforesaid 3 syndicate members apprehended outside the airport, an attempt was made to trace out the other 4 persons who had earlier handed over the gold to them. It was gathered that out of these 4 persons, 3 persons had already left for Singapore, whereas the 4th person i.e. Applicant No. 5 was available at his hometown at Tanjore.

3.5. As part of investigations, statement of Applicant No. 5 who was traced out later had been recorded subsequently on 31.08.2017 who informed that he had arrived from Singapore by Tiger Air Flight No. 2664 on 29.05.2017 at Trichy Airport; that gold in a pouch which was delivered to him at Singapore had been carried by him and was handed over to the syndicate members outside Trichy Airport; that he was not the owner of the gold and had carried the same for a monetary consideration.

3.6 Thus, in this entire operation conducted by DRI, 26 numbers of gold bars in full and cut form, totally weighing 6593.800 grams, collectively valued at Rs.

1,92,67,084/- alongwith Indian currency amounting to Rs. 1,00,000/- and the Innova Car valued at Rs. 3,86,400/- were seized.

TABLE No. 01**Gold seized from the 3 syndicate members at Trichy Airport**

Sr. No.	Pkt no.	Markings found on the gold bar	Serial no. found on gold bars	Weight in grams	Remarks
1	P1	Essayeur Fondateur	AV11398	495.800	Cut piece of FMG (CFMG)
2	P1	Valcambi Suisse	AA765448	99.800	FMG
3	P1	Valcambi Suisse	AA765444	99.800	FMG
1	P2	Switzerland AH Melter Assayer	G82746	515.200	CFMG
2	P2	Valcambi Suisse	AA765040	99.800	FMG
3	P2	Valcambi Suisse	AA765039	99.800	FMG
1	P3	UBS		484.300	CFMG
2	P3	Valcambi Suisse	AA765445	99.800	FMG
3	P3	Valcambi Suisse	AA765449	99.800	FMG
1	P4	Essayeur Fondateur	AV11397	481.8	CFMG
2	P4	Valcambi Suisse	AA765450	99.900	FMG
2	P4	Valcambi Suisse	AA765035	99.900	FMG
1	P5	Suisse		487.700	CFMG
2	P5	Valcambi Suisse	AA765034	99.800	FMG
3	P5	Valcambi Suisse	AA765031	99.800	FMG
			TOTAL	3463.000	

TABLE No. 02**Gold Seized from the APPLICANT Nos. 1 to 4 at apprehended at Trichy Airport**

Sr. No.	Pkt no.	Markings found on the gold bar	Serial no. found on gold bars	Weight in grams	Remarks
SEIZED FROM SHRI. A. JAYAKUMAR [Applicant No. 1]					
1	P6	Essayeur Fondateur	C704770	517.400	Cut piece of FMG (CFMG)
2	P6	Valcambi Suisse		511.700	CFMG
			TOTAL	1029.100	
SEIZED FROM SHRI. R. KARTHIK [Applicant No. 2]					
1	P7	Fine Gold 999.9	C704767	522.300	CFMG
2	P7	Valcambi Suisse	AA765447	99.800	FMG
3	P7	Valcambi Suisse	AA765446	99.800	FMG
			TOTAL	721.900	
SEIZED FROM SHRI. M. MUTHUSAMY [Applicant No. 3]					
1	P8	Suisse		477.000	CFMG
2	P8	Valcambi Suisse	AA765033	99.800	FMG
3	P8	Valcambi Suisse	AA765038	99.800	FMG
			TOTAL	676.600	
SEIZED FROM SHRI. M. MUTHUSAMY [Applicant No. 4]					
1	P9	Valcambi Suisse		503.600	CFMG
2	P9	Valcambi Suisse	AA765032	99.800	FMG
3	P9	Valcambi Suisse	AA765037	99.800	FMG
			TOTAL	703.200	
			TOTAL OF TABLE No. 2	3130.800	
			TOTAL OF TABLE NO. 1 & 2	6593.800	

4. Investigations carried out had revealed that the smuggling of gold was initiated by some persons based at Singapore and these persons would identify passengers at Singapore who were scheduled to travel to India and convince them to carry their gold for a monetary consideration. The photographs / flight details of these passengers scheduled to travel to India alongwith the quantity of gold etc to India would be sent by the Singapore based group to their accomplices based at Trichy. These accomplices based at Trichy had been employed by the Singapore based persons. These accomplices would identify the passengers who had arrived from Singapore, receive, inventorize and account for the smuggled gold and the same would be disposed of by them as per the instructions and directions of the Singapore based group. It was gathered that this syndicate had earlier smuggled about 36 kgs of gold into India.

5. After due process of the law, the Original Adjudicating Authority viz Jt. Commissioner of Customs (Preventive), Trichy vide a common Order-In-Original No. TCP-CUS-PRV-JTC-031-18 dated 07.03.2018 [C.No. VIII/10/60/2017-Cus.Adj], ordered for the absolute confiscation of the entire aforesaid quantity of gold viz 6593.800 grams of gold valued at Rs. 1,92,67,084/- under Section 111(a), 111(d) and 111(e) of the Customs Act, 1962 alongwith the Indian currency of Rs. 1,00,000/-. The Innova car was allowed to be released on payment of redemption fine of Rs. 40,000/-. The details of the penalty imposed on the applicants is as given at Table-03, below.

TABLE No. 03.

Sr. No.	Name	Quantity of gold seized in gms.	Value in Rs.	Penalty imposed u/s 112 (a) of C.A. 1962 in Rs.
1	Shri. A. Jayakumar,	1029.100	30,07,030/-	1,00,000/-
2	Shri. R. Karthik	721.900	21,09,392/-	1,00,000/-
3	Shri. M. Muthusamy	676.600	19,77,025/-	1,00,000/-
4	Shri. B. Krishnamoorthi	703.200	20,54,750/-	1,00,000/-
5	Shri. G. Gopalkrishnan	Co-mingled with seizure from the 3 persons in the Innova Car. (quantity in Table No. 1, above)		1,00,000/-

6. Aggrieved by this order, the Applicants filed an appeal with the appellate authority viz, Commissioner of GST, Service Tax & C.Ex (Appeals), Trichirappalli

- Pin : 620 001 who vide a common Order-in-Appeal No. TCP-CUS-000-APP-144-148 dated 08.08.2018 [A.No. C24/84 to 88/2018-TRY(CUS) upheld the absolute confiscation alongwith the penalty imposed by the Original Adjudicating Authority and rejected the Appeal.

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

7.01. that the order of the appellate authority was against law, weight of evidence and circumstances and probabilities of the case.

7.02. that gold was not a prohibited item and according to the liberalized policy, the gold should be released on payment of redemption fine and concessional duty.

7.03. that the applicants had submitted to the Customs that the gold belonged to them and had been purchased out of their earnings at Singapore for use by their family.

7.04. that they are all eligible to import gold under the notification at concessional rate as they had all had stayed at Singapore for over 1 year. This plea had not been considered by both the lower adjudicating / appellate authorities.

7.05. that the applicants possessed foreign currency in their bank account which had not been considered by the lower adjudicating / appellate authorities.

7.06. that they had submitted to the Customs their willingness to pay the Customs duty. However, this opportunity was not accorded to them.

7.07. that they had sought the footage of the CCTV cameras which would reveal that they had not attempted to pass through the green channel.

7.08. that the gold had not been concealed and only issue of the department was that they had passed through the green channel.

7.09. that to buttress their case, the applicants had relied upon a host of judgements which had allowed the (i). release of the gold on payment of redemption fine (ii). re-export of the gold

Under the circumstances of the case, the applicants have prayed that the order passed by the appellate authority may be set aside / allow to permit the re-export of the gold with lesser redemption fine / release the gold on payment of

concessional rate of duty and to reduce the penalty imposed and to render justice.

8. Personal hearings in the case was scheduled through the video conferencing mode for 01.12.2021 / 07.12.2021. Smt. Kamalamalar Palanikumar, Advocate for all the 5 aforesaid applicants appeared personally and submitted a written submission and requested to release the gold on reasonable RF and to reduce the penalty. In her written submission handed over during the personal hearing, she reiterated her prayers and submitted a few more case laws to buttress her case and prayer to release / re-export the gold.

9. Government has gone through the facts of the case. The Government notes that the Applicants No. 1 to 4 had not opted for the green channel and were intercepted at the exit gate of the airport while attempting to carry the gold jewellery / gold chains without declaring the same to Customs. The applicants had all admitted that they had not declared the gold with an intent to evade the Customs duty. A declaration as required under Section 77 of the Customs Act, 1962 had not been submitted. The applicant no. 5 had already cleared himself from the airport and had used the green channel facility. The gold bars carried by him from Singapore had been handed over to the accomplices waiting outside the Trichy airport in the Innova car and this gold had been seized alongwith gold which had been handed over by the other 3 persons. The same had not been declared to the Customs and duty on the same had not been discharged. Hence, confiscation of the same was justified.

10.1 The Governments notes that the Applicants no. 1 to 4 in their Statements to the Customs have stated that they were working at Singapore from a long time and the duration of work at Singapore is as given below at Table No. 4, below. They have claimed that by virtue of this they were eligible to import upto 1 Kg gold at concessional rate.

TABLE No. 04

Sr No	Name	Working period abroad	Country of Stay
1	Shri. A. Jayakumar,	4 ½ years	Singapore

2	Shri. R. Karthik	7 years	Singapore
3	Shri. M. Muthusamy	1 year	Singapore
4	Shri. B. Krishnamoorthi	5 ½ years	Singapore

10.2 . Government notes that in their statements, the applicants have given the details of the number of years they had been working at Singapore. They had not revealed to the Customs that they had returned after a period of 1 year. The applicants had not claimed before the original adjudicating authority and appellate authority that they were eligible to bring the gold under concessional rate of duty. Government notes that the applicants have raised this averment now and no documentary evidence to justify their claims have been furnished. This clearly is an afterthought to somehow obtain a favourable order.

11. Further, the Government finds that the Applicants Nos. 1 to 4 had submitted written letters to the original adjudicating authority that the gold did not belong to them. However, before the appellate authority these 4 applicants had changed their stance and had claimed that the gold belonged to them. Government notes that the applicants were admittedly working at Singapore as Electricians / Mason / Plumber and such a substantial quantity of gold brought by them is unfathomable and is clear that the gold found in their possession did not belong to them and had carried it on instructions and for monetary consideration. This is corroborated by the fact that a common person was waiting outside the airport to collect the gold. The original adjudicating authority had rightly observed that these applicants were carriers and indulged and abated in the act of smuggling for monetary gain. The claim now that the same belongs to them is clearly and afterthought.

12. From the evidences, statements, similar marking on the gold, manner of concealment, persons waiting outside the airport, similar type of FM gold bars, the supplier being someone else, the Government notes that all this is a case of organised smuggling. Considering the quantum of gold attempted to be smuggled, engaging the applicants as carriers, the manner in which persons were waiting outside the airport to receive it, all indicates that the syndicate was engaged in the act of smuggling gold with impunity. Government notes that the

lower authorities after examining all the facts have rightly ordered for the absolute confiscation of the gold which would act as a severe deterrent to such unscrupulous elements engaged in flagrant and brazen smuggling in an organised manner.

13. 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".

14. 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.

15. 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.

16. With regard to Applicant no. 5, the gold was not found in his possession but was seized subsequently, from the Innova car belonging to the Trichy based persons. He too had initially disclaimed the gold.

17. In view of the foregoing paras, the Government finds that as the applicants 1 to 4 and also applicant no. 5, all had not declared the gold at the time of arrival and were a party to the syndicate engaged in brazen act of smuggling which is established from similar marking on the gold, manner of concealment, same persons waiting outside the airport, the supplier being someone else, etc, the absolute confiscation of the gold was justified. This should act as a deterrent to those engaged in the act of smuggling. Government notes that applicant no. 5 is in the same boat i.e. the act committed by applicant no. 5 is similar to that committed by the applicants no. 1 to 4. Moreover, he has claimed that gold

weighing 1030 grams was brought by him. This gold is among the quantity seized from the accomplices waiting outside in the Innova car. From the details of the seizure available in the Order-in-Original, the quantity of gold brought by the Applicant no. 5 cannot be segregated / identified. However, the Government notes that since in the revision application filed by the Applicant No. 5, it is revealed that 1030 grams of gold valued at Rs. 30,37,030/- was brought by him, an effort to arrive at this quantity of 1030 grams was made. Government notes that the quantity declared by the Applicant No. 5 cannot be arrived at using any permutation and combination from the details available in the Order-in-Original (i.e. details have been reproduced here at Table No. 1 above). This indicates that the Applicant No. 5 has not approached the revision authority with clean hands and has made an incorrect submission. For the aforesaid reasons, Government is inclined to reject the revision application filed by all the 5 applicants.

18. The main issue in the case is not only the quantum of gold but the manner in which the impugned gold was being brought into the country, especially in an organised manner as a syndicate which has all been discussed in the aforesaid paras. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of bringing the gold collectively i.e. in collaboration with others, similar type of FM gold carried in similar pouches, not declaring to Customs and handing over to accomplices confirms that these 5 applicants by their acts abetted with the syndicate in consciously attempting to smuggle large and commercial quantity of gold therefore, this is a fit case for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". The redemption of the gold will encourage non bonafide and

unscrupulous elements to resort to bring gold in this manner. If the gold is not detected by the Custom authorities, the passenger gets away with smuggling and if not, he has the option of redeeming the gold. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked.

19. Government finds that the penalty as mentioned at Table - 03 above, imposed on the applicants under Section 112 of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

20. With regard to the request by the applicant for re-export of the seized gold and for reduction of the penalty amount, the same have been dealt with at length by the Appellate Authority and Government does not find it appropriate to interfere. The Question of allowing re-export even otherwise does not arise once goods are absolutely confiscated.

21. For the aforesaid reasons, Government is inclined not to interfere with the orders passed by the lower authorities and is inclined to dismiss the revision applications filed by the applicants.

22. Revision Applications are thus, dismissed.


(SHRAWAN KUMAR)

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

18-22
ORDER No. /2022-CUS (SZ) /ASRA/

DATED 27.01.2022

To,

1. Shri. A. Jayakumar, S/o. Shri. V. Alagarsamy, 856, Pappakkudi, Salor Post, Sivagangai Dist.
2. Shri. R. Karthik, S/o Shri. K. Ramachandran, 277, Thippan Viduthi, Venganarai Post, Orathanadu Taluk, Thanjavur- 614 628.

3. Shri. M. Muthusamy, S/o. Shri. R. Muniyandi Thevar, 11, Peryar Street, Anna Nagar, Karaikudi.
4. Shri. B. Krishnamurthi, S/o Shri. V. Blaguru, 6/25, Ettumantidal, Seerathoppu PO, Srirangam Talul, Trichy- 620 102.
5. Shri. Govindharaju Gopalkrishnan, S/o Shri. Govindharaju, 5/114, Thirumangalakottai Keelaiyur, Mukkarai Velu Street, Orathanadu Taluk, Thanjavur- 614 628.
6. Commissioner of Customs (Preventive), No. 1 Williams Road, Cantonment, Tiruchirappalli – 620 001.

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