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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

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F.No. 373/215/B/SZ/2018-RA / 2705 : Date of Issue : 08.07.2022

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ORDER NO. 202 /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 30.06.2022  
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.

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**(i). F.No. 373/215/B/SZ/2018-RA**

Applicant : Smt. Sithy Rameeza

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

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-  
Appeal No. TCP-CUS-000-APP-117-18 dated 31.07.2018  
[A.No. C24/03/2018-TRY(CUS)] passed by the  
Commissioner of GST, Service Tax & C.Ex, Trichirappalli  
– Pin : 620 001.

**ORDER**

The revision application has been filed by Smt. Sithy Rameeza (hereinafter referred to as the Applicant) against the Order-in-Appeal No. TCP-CUS-000-APP-117-18 dated 31.07.2018 [A.No. C24/03/2018-TRY(CUS)] passed by the Commissioner of GST, Service Tax & C.Ex, Trichirappalli – Pin : 620 001.

2. Brief facts of the case are that the applicant who is a Sri Lankan national was intercepted by Customs Officers at Coimbatore International Airport on 16.11.2017 having earlier arrived from Colombo onboard Sri Lankan Airlines Flight no. UL193. The applicant to the query put forth by the Customs, had replied that she was not in possession of any dutiable / contraband items. A scan of her baggage led to the recovery of two gold bangles [49.5 grams], two gold rings [2.8 grams], one gold chain [48 grams] and two Mattal [37.2 grams]. The total weight of the recovered gold jewellery was 157.5 grams, all were of 24 carats purity and totally valued at Rs. 4,80,375/- and since it was found that the applicant was not eligible to import the gold, the same was seized

3. The Original Adjudicating Authority (OAA), viz, Asstt. Commissioner of Customs, International Airport, Peelamedu, Coimbatore – 641 014 vide Order-In-Original No. C.No. VIII/10/44/2017-Air Cus dated 16.11.2017 ordered for absolute confiscation of the impugned gold valued at Rs. 4,80,375/- under Section 111 (d), (e), (l), (m) & (o) of the Customs Act, 1962 and imposed a penalty of Rs. 48,000/- under Section 112 (a) of the Customs Act, 1962 on the applicant. The OAA has observed that the applicant has a history of previous offence of carrying 401 grams of gold valued at Rs. 12,43,100/- without declaring to Customs.

4. Aggrieved by the said order, the applicant preferred an appeal before 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-117-18 dated 31.07.2018 [A.No. C24/03/2018-TRY(CUS)], rejected the appeal and upheld the Order passed by the OAA.

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

5.01. the order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case;

5.02. that the Appellate Authority ought to have allowed the re-export of the impugned gold under Section 80 of the Customs Act, 1962.

5.03. that the Appellate authority has simply glossed over the judgements and the points raised in the appeal grounds and no cogent reason has been given to reject the Appeal;

5.04. that on the issue of previous offence, it is stated that there was no seizure from the applicant but a case had been registered and the same is pending for adjudication.

5.05. that impugned gold belongs to the applicant and she had worn it and it was her personal belonging; that ownership of the gold was not disputed and there was no ingenious concealment; that the gold jewellery had been purchased out of her own earnings / savings.

5.06. that there was no specific allegation that the applicant had passed through green channel and only contention of department was that the applicant had not declared the gold.

5.07. that baggage rules would apply only if goods are found in the baggage, since the Applicant was wearing the gold, the violation of baggage rules did not arise;

5.08. that the contention of the department of non-declaration of the gold as per Section 77 of the Customs Act, 1962 is refuted as not applicable since the gold was worn by the applicant there was no necessity to declare the same since it was her personal belongings.

5.09. that the personal penalty of Rs. 48,000/- imposed on applicant was very high and requested for reduction.

5.10. that option under Section 125 of the Customs Act, 1962 ought to have been exercised by the OAA.

5.11. that applicant has relied upon the following case laws;

(i). Vigneswaran Sethuraman vs UOI in W.P. 6281 of 2014 (I) dated 12.03.2014.

(ii). Shri. Hamsa Mohideen Mohammed Shajahan, a Sri Lankan national in F.No. C27/243, 252 & 255/Air/2013 AU CUS in O.S No. 370, 349, 364/2013 dated 18.12.2014 passed by Commissioner (Appeals), Cochin, Kerala.

(iii). Smt. Kamaleshwari in Order no. C4-1/35/0/2017 in C.Cus No. 68 of 2017 dated 04.04.2017 passed by Commissioner of Customs (Appeals), Chennai.

(iv). 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 order dated 31.07.2012.

Under the above facts and circumstances of the case, the Applicant prayed that the Revision Authority be pleased to set aside the impugned order and permit to re-export the gold jewellery on payment of nominal fine and penalty and render justice.

6(a). Personal hearing through the online video conferencing mode was scheduled for 23.03.2022 and 30.03.2022. Smt. Kamalamalar Palanikumar, Advocate for the applicant appeared for physical hearing and submitted a written submission. She submitted that the applicant is a Sri Lankan national and was wearing the gold ornaments and there was no concealment. Therefore, she requested to allow re-export of goods on nominal fine and penalty.

6(b). In the written submission dated 30.03.2022 handed over during the personal hearing, Smt. Kamalamalar Palanikumar reiterated the submissions made in the grounds of appeals and relied upon some more case laws viz,

(i). 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, too 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.

(ii). JS (RA) Mumbai in Order no. 65/2020-CUS(SZ) ASRA/Mumbai dated 26.05.2020 in F.NO. 380/58/B/15-RA/3693 held that gold recovered from a pouch kept in the pocket of kurta worn by respondent cannot be termed as ingenious concealment.

6(c). She has reiterated her prayer that the Revisionary Authority may be pleased to set aside the impugned order passed by the AA and permit the applicant to re-export the gold jewellery

7. The Government has gone through the facts of the case and notes that the applicant had failed to declare the goods in her possession as required under Section 77 of the Customs Act, 1962. Even upon being questioned, the applicant had not disclosed that she was carrying dutiable goods and had she not been intercepted would have walked away with the impugned gold jewellery

without declaring the same to Customs. By her actions, it was clear that the applicant had no intention to declare the impugned gold to Customs and pay Customs duty on it. The Government finds that the confiscation of the gold jewellery is therefore, justified.

8. 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”.

9. 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.

10. 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.*

11. The Government notes that the applicant had been found involved in an earlier case also wherein gold had been recovered from her. From the facts of the case, Government finds that the applicant is a habitual offender. The demeanour of the applicant is required to be considered while confiscating the gold and imposing penalty. The Government notes that the OAA has passed a legal and judicious order which has been upheld by the AA. Her past involvement in importing gold indicates that the applicant was aware of the law and despite this brought gold and had contumaciously, not declared the

same. Therefore, considering her past antecedents, Government is not inclined to interfere in the order passed by the lower authorities.

12. The Government finds that the personal penalty of Rs. 48,000/- imposed on the applicant under Section 112(a) of the Customs Act, 1962 is commensurate with the omissions / commissions committed.

13. The Revision application is dismissed.

*Shrawan*  
*30/6/22*

( SHRAWAN KUMAR )

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

ORDER NO. 202 /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 30.06.2022.

To,

1. Smt. Sithy Rameeza, Sri Lankan national, postal address not available in the records so dispatched to C/o. Smt. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Chennai - 600 001.
2. Commissioner of Customs, No. 1 Williams Road, Cantonment, Tiruchirappalli - 620 001.

Copy to:

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