



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

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F.No. 373/130/B/WZ/2021-RA / 5610

Date of Issue 29.09.2021

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ORDER NO 235/2021-CUS (WZ)/ASRA/MUMBAI DATED 24.09.2021 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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Applicant : Shri. Siddique Vellai Meeran Mohideen.

Respondent : Commissioner of Customs (Prev), Kochi.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. TVM-EXCUS-000-APP-01-2021 dated 06.01.2021. passed by the Commissioner of Customs (Appeals), Central Tax, Central Excise & Customs, Kochi 682 018.

ORDER

This revision application has been filed by Shri. Siddique Vellai Meeran Mohideen (herein after referred to as the Applicant) against the Order in appeal No. TVM-EXCUS-000-APP-01-2021 dated 06.01.20218 passed by the Commissioner (Appeals), Central Tax, Central Excise & Customs, Kochi – 682 018.

2. Briefly stated the facts of the case are that the applicant arrived at the Thiruvanthapuram International Airport arrived on 01.02.2018 from UAE on board Emirates flight no. EK522. He was intercepted at the Customs Exit Gate after walking through the green channel facility. On questioning whether he was carrying any dutiable goods, the applicant replied in the negative. Two chains were found concealed in a pair of jeans placed in the checked-in baggage, 3 gold chains which were concealed in his undergarments were found during the personal search of the applicant and one gold chain was found concealed in a polythene cover placed in the handbag. Thus, six gold chains totally weighing 799.430 gms having market value of Rs. 24,36,661/- were recovered from the applicant.

3. The Original Adjudicating Authority vide Order-In-Original No. 09/2018 dated 30.10.2018 through F.No. VIII/10/44/2018 CCP Adj., ordered absolute confiscation of the seized gold and imposed penalty of Rs. 20,000/- on the applicant under Section 112 of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals), Kochi who vide Order-In-Appeal No. TVM-EXCUS-000-APP-01-2021 dated 06.01.2021 rejected the appeal and declined to interfere in the Order-in-Original passed by the adjudicating authority.

5. Aggrieved with the aforesaid order dated 06.01.2018 passed by the Commissioner (Appeals), Kochi, the Applicant, has filed this revision application inter alia on the grounds that;

5.1. The applicant had not crossed the Customs barrier when gold was recovered from his possession nor did he fail to declare the gold before the Customs Officer.

5.2. The Applicant had not attempted to smuggle the gold and confiscation without an option for redemption is wrong in the absence of any prohibition for its importation.

5.3. The applicant has stated that denial of cross examination of witnesses who signed the mahazhar to prove the place of seizure was violation of natural justice.

5.4. The applicant has stated that import of gold chains in baggage was not prohibited and hence, redemption was a vested right as provided under Section 125 of the Customs Act, 1962 and denial of the vested right was illegal and remedial action was warranted.

5.5. The Applicant has stated that gold chain was not excluded from the baggage and its importation as baggage is not prohibited like a motor vehicle.

5.6. The Applicant has stated that in the absence of any violation of provisions of the Customs Act or baggage rules or any other law, upholding of imposition of penalty of Rs. 20,000/- was not sustainable and was liable to be set aside.

The Applicant has cited a catena of case laws to buttress his case and has prayed to set aside, (a). the impugned Order-in-Appeal No. TVM-EXCUS-000-APP-01-2021 dated 06.01.2021 passed by the Commissioner (Appeals), Kochi and (b). the imposition of penalty of Rs. 20,000/- and to (c) pass any other order as deemed fit.

6. A personal hearing in the case was scheduled on 24.08.2021. Shri. Jayaprakash Gopinathan, Advocate appeared on behalf of the Applicant and reiterated the submissions already made and also stated that additional submissions would be made. In the additional submissions he once again mentioned that gold jewellery is not a prohibited item, quoted several decisions and requested to release gold jewellery on reasonable R.F and penalty.

7. The Government has gone through the facts of the case, and notes that the applicant had passed through the green channel and had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. In spite of being questioned repeatedly, the applicant had not disclosed that he was carrying dutiable goods and had he not been intercepted would have walked away with the impugned goods without declaring the same to Customs. Also, a few of the gold chains were hidden by the applicant in his undergarments

which indicates that the applicant did not intend to declare the same to Customs. The Government finds that the confiscation of the gold 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 Applicants thus liable for penalty.

8. Now the issue to be decided in this case is whether the impugned gold chains can be allowed to be released on redemption. In a recent judgement by the Hon'ble Supreme Court in the case of M/s Raj Grow Impex and others Vs UOI (CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 - Order dated 17.06.2021), it is stated ".....when it comes to discretion, the exercise thereof has to be guided by law; according to the rules of reason and justice; and has to be based on the relevant considerations.....such an exercise cannot be based on private opinion." Government notes that there is no past history of such offence/violation by the Applicant. The part of impugned gold jewellery was concealed but this at times is resorted to by travellers with a view to keep the precious goods secure and safe. The quantity / type of gold being in form of gold

chains is jewellery and is not commercial in nature. The original adjudicating authority and appellate authority both have not granted redemption as the applicant had stated that the confiscated gold did not belong to him. However, Government finds that there are a catena of cases regarding release of goods to the person from whose possession valuables are recovered, in absence of the owner. Further, the Hon'ble Supreme Court of India in Hargovind Das K Joshi *versus* Collector of Customs reported in 1992 (61) ELT 172 has set aside absolute confiscation of goods by Collector without considering question of redemption on payment of fine although having discretion to do so, and remanded the matter to Collector for consideration of exercise of discretion for imposition of redemption fine as per Section 125 of Customs Act, 1962. Government also notes that even prohibited goods can also be allowed for redemption at the discretion of the judicial authority. The section also allows goods to be released to the person from whose possession or custody such goods have been seized. Under the circumstances, the Government opines that the order of absolute confiscation in the impugned case is in excess and unjustified. The order of the Appellate authority is therefore liable to be set aside and the goods are liable to be allowed redemption on suitable redemption fine and penalty.

10. In view of the above, the Government is inclined to take a reasonable view in the matter and sets aside the impugned order of the Appellate authority in respect of the impugned gold jewellery. The impugned gold jewellery weighing 799.430 gms valued at Rs. 24,36,661/- (MV) [Rs. 22,32,688/- (AV)] is allowed redemption on payment of Rs. 9,50,000/- (Rupees Nine lakhs fifty thousand only). The penalty of imposed under section 112 (a) of the Customs Act is appropriate.

11. Revision Application is disposed of on above terms.

*Shrawan*  
24/9/21  
(SHRAWAN KUMAR)

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

ORDER No 235/2021-CUS (WZ) /ASRA/

DATED 24.09.2021

To,

1. The Commissioner of Customs (Prev), 5<sup>th</sup> Floor, Catholic Center, Broadway, Kochi - 682031. Email : cusprevhq.ker@nic.in.
2. Shri. Siddique Vellai Meeran Khader Mohiden, 6B/1, Kattuchekkadi, 1<sup>st</sup> Street, Melepalayam, Tirunelveli District, Tamil Nadu, Pin : 627 005.

Copy to:

3. Shri G. Jayaprakash, Advocate, Prakasham, APRA-8, Pully Lane, Pettah P.O, Thiruvananthapuram, Pin : 695 024.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ,
6. Spare Copy.