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GOVERNMENT OF INDIA MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade, Mumbai-400 005

F.No. 373/112 - 124/B/15-RA 63/8 Date of Issue 27/0/2/

CUS (SZ)/ASRA/MUMBAI DATED 25:10.2021 OF THE ORDER NO. GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicants: Shri. T.C. Venkatesan,

Shri. N. Kaliyamoorthy,

Shri. N. Mathivanan.

Shri. K. Lognathan,

Shri. B. Sivaguru,

Smt. T. Chandra,

Shri. B. Durai,

Shri. S. Thiyagarajan,

Shri. N. Suresh,

Shri. N. Ramesh,

Smt. Sivaguru Sumathi,

Shri, R. Somasundaram

and Shri P. S. Ranganathan.

Respondents: Commissioner of Customs, Meenambakkam, Chennai: 600:027

Subject

: Revision Applications filed respectively, under Section 129DD of the Customs Act, 1962 against the following 13 Orders-in-Appeal C. Cus. Nos. 5 to 17/2014 dated 28.10.2014. by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

These revision applications have been filed by Shri. T.C. Venkatesan, Shri. N. Kaliyamoorthy, Shri. N. Mathivanan, Shri. K. Lognathan, Shri. B. Sivaguru, Smt. T. Chandra, Shri. B. Durai, Shri. S. Thiyagarajan, Shri. N. Suresh, Shri. N. Ramesh, Smt. Sivaguru Sumathi, Shri. R. Somasundaram and Shri P. S. Ranganathan (herein referred to as the Applicants) against the orders in Appeal C. Cus. Nos. 5 to 17/2014 dated 28.10.2014 passed by the Commissioner of Customs (Appeals-I) Chennai.

- 2. All the above mentioned Revision Applications pertain to gold jewellery 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 single Order-in-Original, these cases are taken up together for a common disposal. Briefly stated facts of the case are that the Officers of Customs, Airport, Trichy intercepted the Applicants, S/Shri T.C.Venkatesan, N. Kaliyamoorthy, N. Mathivanan, K. Lognathan, B. Sivaguru, Smt. T. Chandra, B. Durai, S. Thiyagarajan, N. Suresh, N. Ramesh, Smt. Sivaguru Sumathi, R. Somasundaram and Shri P. S. Ranganathan at the Anna International Airport. They had arrived on 27.03.2013 from Malaysia onboard Malaysian Airlines Flight MH182. Examination of their baggage and person resulted in the recovery of 13 Samsung LED Televisions and gold jewellery. No declarations were filed by the Applicants for the import of gold and and Televisions.
- 3. Investigations carried out revealed that the entire trip abroad was arranged through a scheme formulated and managed by Shri P.S. Ranganathan. Money was collected through monthly instalments from the Applicants to fund the trip to Singapore and Malaysia. The Applicants in their initial statements also informed that Shri P.S. Ranganathan had given Indian rupees to each Applicant through Shri N. Kaliamoorthy (also an applicant) to be returned to him on arrival to Singapore. The Applicants also uniformly informed that during their stay at Malaysia, Shri P.S. Ranganathan gave them the gold Jewellery in various quantities and instructed them to hand over the jewellery outside Chennai Airport.

4. After due process of the law the Original Adjudicating Authority vide a combined Order No. 281/25.04.2014, allowed redemption of the Television sets on payment of 25% as redemption fine and on payment of applicable duty upon extending the permissible baggage allowance. The gold jewellery was absolutely confiscated and penalty under Section 112(a) and 114(i) of the Customs Act, 1962 was imposed on each of the applicants, as detailed below;

TABLE No. 1

Sr. No.	Name	Quantity In gms.	Value	Penalty 112 (a) of C.A. 1962	Indian currency carried at departure (in lakhs)	Penalty u/s 114(i) of C.A. 1962
1	Shri. T.C.Venkatesan	251	6,95,144/-	70,000/-	1.0	10,000/-
2	Shri. N. Kaliyamoorthy	185.8	5,14,573/-	50,000/-	2.95	30,000/-
3	Shri. N. Mathivanan	134	3,71,113/-	35,000/-	1.40	15,000/-
4	Shri. K. Lognathan	94.5	2,61,717/-	25,000/-	3.25	30,000/-
5	Shri. B. Sivaguru	137.9	3,81,914/-	35,000/-	3,40	35,000/-
6	Smt. T. Chandra	174.5	4,83,277/-	50,000/~	3.30	30,000/-
7	Shri, B. Durai	91.200	2,52,578/-	25,000/-	3.00	30,000/-
8	Shri. S. Thiyagarajan	90.3	2,50,085/-	25,000/-	3.35	30,000/-
9	Shri, N. Suresh	135.3	3,74,713/-	35,000/-	3.00	30,000/-
10	Shri. N. Ramesh	91.2	2,52,578/-	25,000/-	0.60	15,000/-
11	Smt. Sivaguru Sumathi	180 grams	4,98,510/-	50,000/-	4.35	40,000/-
12	Shri. R. Somasundaram	93.5	2,58,948/-	25,000/-	2.9	30,000/-
13.	P. S. Ranganathan			2,50,000		2,25,000/-

- 5. Aggrieved by this order, the Applicants filed an appeal with the Commissioner of Customs (Appeals). The Commissioner (Appeals) vide his orders nos. C. Cus-I Nos. 5 to 17/2014 all dated 28.10.2014 upheld the absolute confiscation and rejected the Appeal.
- 6. Aggrieved with the above order, the Applicants have filed this revision applications inter alia on the following grounds,
 - 6.1 A. The order of the learned lower appellate authority is unjust, unfair, unreasonable, against the weight of evidences, contrary to law, violative of the principles of natural justice and therefore not maintainable in law.

- 6.2. The learned lower appellate authority committed gross violation without affording an opportunity of hearing to the applicant herein by going on record that since his predecessor had already heard the applicant in the matter and as the facts and grounds available on record disclose the issue involved which was sufficient to pass the impugned order and on this reason alone, the order requires to be set aside.
- 6.3. The learned lower appellate authority without prejudice to the above preliminary objections raised by the applicants herein, also ought to have taken proper note of the fact that the show cause notice having not placed any reliance on the Mahazar, statements or the purity of the gold as alleged to have been certified by the Government approved gold appraiser or the gate pass alleged to have been taken possession from the applicants ought to have held that the order passed by the lower authority without placing reliance upon the said documents in the show cause notice is totally bad in law and ab-initio void and unsustainable.
- 6.4. The learned lower appellate authority before going on record that the applicants herein had not declared the jewellery, ought to have noticed the clear admission made to the Superintendent enquiring with him the declaration made by the applicant and others regarding the possession of the gold jewellery worn on their person visible to the naked eye.
- 6.5. The learned lower appellate authority further ought to have appreciated the facts and circumstances in which the applicants were placed, which clearly evidenced to the carrying of a television set as a separate item of baggage and the further fact of wearing the jewellery on their person which was totally visible to the naked eyes thereby, leaving no room for maintaining the allegation that the applicants had contravened the provisions of Section 77 of the Customs Act by way of mis-declaration/non-declaration of the jewellery so as to confiscate the jewellery under the provision of the Customs Act.
- 6.6. The learned lower appellate authority further ought to have seen that the applicants had not concealed any of the goods brought by them as part

of their baggage in any manner and only brought them in the usual course. The said authority ought to have held that in such a factual position there was absolutely no room for holding the applicants to have any mensrea to smuggle the alleged gold jewellery.

- 6.7. The learned lower appellate authority further ought to have seen that merely because the applicants went on a foreign tour with others and all of them brought certain gold jewellery with them by virtue of them being in the gold trade and sourced from their relatives residing abroad who too were engaged in the said trade, the investigating Customs officials had wrongly assumed that all of them belonged to a smuggling group headed by Mr. P.S. Ranganthan. Also, Shri. P.S Ranganathan then had compelled and forced the other applicants to give a statement in support of the revenue's case under threat of arrest. The lower authorities ought not to have relied upon the said stereotyped statement obtained from the applicants overlooking the retraction made by all the applicants.
- 6.8. The learned lower appellate authority also ought to have considered that the very arrest of the applicant was made contrary to the guidelines provided by the Ministry of Finance mandating that arrests should only be made in appropriate cases involving the value of the offending goods over Rs. 20 lakhs, clearly exposes the bias of the authority in the matter due to which the bonafide baggage imported by them had been shown as an act of smuggling so as to deprive the applicants of the lawful possession of the property acquired through legitimate means

6.9. The learned lower appellate authority committed gross error in recording the finding that the jewellery under import is an item prohibited for import under Section 11 of the Customs Act, by incorrectly relying upon the ratio of the earlier judgments delivered by the Honble Supreme Court of India without understanding that the policy concerning the import of gold was stringent at the material time when the said judgments were delivered whereas the import of the gold/jewellery had since been liberalized by the Government.

- 6.10. The learned lower appellate authority also was in error in not appreciating the reliance placed by the applicant on the Customs Notification bearing No 12/2012-Customs dated 17.12.2012 and denying its benefit on the grounds of non-fulfillment of the conditions imposed in the notification. The lower authority had failed to understand that the fulfillment of the condition imposed in the said notification was only for the availment of the concessional rate of duty provided therein on the import of the gold/jewellery as an item of baggage. This otherwise meant that there is no bar in allowing the jewellery on payment of the duty at the tariff rate without extending the benefit of the said benefit.
- 6.11. The learned lower appellate authority further ought to have been aware that the claim made by the authorities that the jewellery in question were made of 24 karats gold is totally unsustainable in as much as it was not at all possible to make jewellery using gold of 24 karat purity. For this reason alone, the order of the lower adjudicating authority is not proper.
- 6.12. The learned lower appellate authority further had failed in not considering the subtle fact that while in the seizure proceedings and the consequent proposal made in the show cause notice the gold item had been described as gold jewellery of 24 karats whereas, the learned lower adjudicating authority traversing beyond the scope of the show cause notice had ordered the confiscation of the said goods holding it to be crude gold of 24 karat. Therefore, also the order was not maintainable.
- 6.13. The learned lower appellate authority had also committed gross error in not fairly exercising the judicial discretion conferred under Section 125 of the Customs Act by allowing the redemption of the jewellery on payment of appropriate duty at the tariff rate or atleast allow the re-export of the said jewellery even if he held the view that the applicants were guilty of misdeclaration.
- 6.14. The learned lower appellate authority further ought to have judiciously considered the representations made by the applicants regarding the fact of carrying the gold jewellery made of 22 karat purity on

their person at the time of leaving the country and getting them exchanged into jewellery of 23 karat purity at Singapore with the help of their relatives who were also in the gold trade. Hence, the Order has resulted in a gross miscarriage of justice.

- 6.15. The learned lower appellate authority was in further error in approving the order of the original authority holding the applicants guilty of carrying the Indian currency in violation of the RBI regulation merely based on the retracted statements. The statement had not been corroborated and had been extracted from the applicants only for the purpose of executing their arrest even though the value of the goods imported by them was much less than the guidelines value of Rs. 20,00,000/-.
- 6.16. The learned lower appellate authority also erred in confirming the penalty under Section 114 (i) of the Customs Act without properly considering that the said section was solely concerned with the attempt to export any prohibited goods. As such, the penalty imposed on the applicants under the above provision was not proper or sustainable
- 6.17. The learned lower appellate authority further ought to have seen that since the original authority had not held that the Indian Currency was being exported and had imposed penalty for having rendered the goods liable for confiscation was bad in law and was unwarranted and unjustified
- 6.18. The learned lower appellate authority for the aforesaid said reasons and for the reason of not establishing any criminal intent or negligence or defiance of law was in gross error in sustaining the huge penalty on the applicants under Section 112 (a) of the Customs Act, 1962.
- 6.19. The learned lower appellate authority further ought to have extended the free baggage allowance on the television imported by them as it was a dutiable goods within the meaning of the Customs Act instead of arbitrarily ordering its confiscation and only allowing it to be redeemed on payment of huge redemption fine @ 25% of its value which is highly excessive and was totally unreasonable.

Hence, the applicants have submitted that the order of the lower appellate authority ordering confiscation of the gold jewellery and approving the huge redemption fine and penalties was highly excessive, arbitrary and unreasonable.

- 7. In view of the above, personal hearings in the revision applications filed by the applicants were scheduled on 04.03.2021 / 12.03.2021. Shri. N. Viswanathan, Advocate vide his letter dated 10.03.2021 requested for an adjournment due to ill-health. Personal hearings were scheduled on 08.04.2021 / 15.04.2021. No one attended. Thereafter, personal hearing was once again scheduled for 23.07.2021 / 29.07.2021. Shri. N. Viswanathan, Advocate vide his email dated 27.07.2021 requested for adjournment of 15 days on the grounds that he had received the intimation letter late and he had to arrange for the instructions etc from the applicants. Personal hearing was again scheduled for 01.09.2021 / 07.09.2021. None of the applicants attended nor any representative from their side attended. None attended for the Respondents i.e. department. All the aforesaid dates were scheduled through online video conferencing mode. Since sufficient opportunity has been given, hence the case is being taken up for decision on the basis of evidence available on record.
- 8. The Government observes that the trip of the Applicants to Singapore and Malaysia was organized by one, Shri P. S. Ranganathan who claims to have collected monthly contributions from them. The Indian currency was handed over to the Applicants before their departure. This was not declared to Customs at the time of departure. On arrival, the Applicants had admitted to carrying gold jewellery only after being questioned by the Customs Officers and had not declared the same as required under Section 77 of the Customs, Act, 1962.
- 9. The Government has delved into the facts of the case. The trip to Singapore and Malaysia was organized by one Shri P. S. Ranganathan. Shri. P. S. Ranganathan was the President of the Jewelers Association and nine of the Applicants were owners of Gold pawn shops and all of them were members of the Jewellery Association. The amounts in Indian currency was handed over to Shri Kaliyamoorthy (applicant) by Shri P. S. Ranganathan, who distributed it to the other Applicants at the time of departure. Government observes that the entire group travelled together and almost all of the Applicants were carrying Television

sets and gold jewellery (in form of chains and bracelets) as baggage. It is evident that the trip was planned by the group to travel abroad and bring gold ornaments on their return journey. They were aware that gold is a dutiable item and was prohibited for persons having a short duration of stay abroad. The planned strategy was to evade payment of duty by walking through the green channel and not declaring the goods. The original adjudicating authority after going through the shifting stories mooted by the applicants has remarked that the stories were incredulous. The applicants initially had stated that when they were abroad, the impugned gold was handed over to them by Shri. P. S. Ranganathan. Later, the stories were changed and the applicants stated that they had worn ornaments while departing and exchanged the same abroad with the help of their relatives who were also jewelers. Also, the Government finds that their submission that Rs. 2000 / Rs. 3000 were collected by them each month for a period of 5 years, too does not add up especially when compared to the money carried by them while going abroad. Each of the applicants had carried more money than claimed to have been saved / collected by them. This indicates that the money handed over to them before their departure by Shri. P. S. Ranganathan through Shri. Kaliyamoorty belonged to Shri. P.S Ranganathan who managed and controlled the entire trip

- 10. These facts of the case lead to conclusion that the trip made abroad by the applicants had been organized and masterminded by Shri. P. S Ranganathan and the entire group had planned to import the impugned gold and clear the same clandestinely without paying any Customs duty. Admittedly, on their trip abroad they had carried the Indian currency without declaring the same which was much above the permissible limit allowed by RBI. They had knowingly taken a higher amount with an intention to purchase the impugned gold and smuggle the same on their return journey. By this act they had rendered themselves to penal action also under Section 114(i) of the Customs Act, 1962 which specifically deals with mis-declaration in the export of goods.
- 11. As far as the involvement of Shri P. S. Ranganathan is concerned, Government observes that he was the organizer of the said trip. Shri. P.S Ranganathan had masterminded the entire operation of taking the group abroad, financing them and then importing the impugned gold and attempting to clear the same without payment of Customs duty by not declaring the same. The facts of Page 9 of 14

the case reveal that he was a frequent traveller and having planned and arranged the said trip, should have ensured that the other passengers were made aware of the rules governing the import of gold. Instead, after clearing himself he was waiting outside the airport for the other applicants. Instead of warning the passengers of the perils of trying to import the gold without any declaration, he had encouraged them and had aided and abetted in the smuggling of gold. Further, it is apparent that he had managed and controlled the group, financed them, had distributed cash through Shri N. Kaliyamoorthy, and thus had made himself liable for penalty.

- 12. The lower authorities have ordered for absolute confiscation of the impugned gold jewellery holding that the Applicants did not have sufficient stay abroad and were therefore not eligible to import the gold. Also, they had passed through the green channel without declaring the same. The Government is in agreement with the order passed by the lower authorities. The applicants had travelled as a group, had taken currency abroad and brought back the impugned gold and attempted to clear the same without payment of Customs duty. Even, when departing they had not declared the currency carried by them and came out with a story that they had worn ornaments when leaving the country and thereafter, exchanged the same during their stay abroad and that it was this gold which was seized. Being part of the jewelers trade, they were aware that while travelling abroad with valuables for a short stay, a declaration is required to be made to Customs. The same had not been done. Having not declared on their way abroad, they cannot claim the benefit later. It is apparent that had the Customs not intercepted the applicants at the airport, they would have evaded payment of Customs duty. Moreover, taking a lenient view, would encourage other unscrupulous people to use the same modus operandi of travelling in a group, and collectively smuggle gold and evade Customs duty.
- 13. There is no doubt that the gold brought by non-eligible persons without fulfilling required conditions becomes prohibited. 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

- 15. Once goods are held to be prohibited, Section 125 of the Customs Act, 1962 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.

- As already stated above, the Government notes that this was a pre-planned trip and all the applicants together had hatched an innovative scheme to import the gold and evade Customs duty. It was pre-decided that no duty would be paid on the impugned gold. The ruse that they had worn the gold on their way abroad and had returned back with the same gold is clearly an afterthought. All since the applicants belonged to the fraternity of jewelers, they were aware of the law and hence, it was all the more incumbent on them to follow the law and not evade payment of Customs duty. Collectively, all the applicants had decided not to declare the gold. This cannot be encouraged and the Government finds that the lower authorities were right in absolutely confiscating the impugned gold and imposing penalty on the applicants. The absolute confiscation and penalty should act as a deterrent to others also who may be attempting to use the same modus operandi. The Government does not find it necessary to interfere in the Orders passed by the lower authorities. The redemption of the gold will encourage such concealment as, 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 the law needs to be invoked. The order of the Appellate authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.
- 17. The lower authorities have held that the applicants had carried Indian Currency on their journey abroad and that the same was beyond the permissible limit of Rs. 7500/- as per RBI guidelines. This is based on the admission statements of the applicants and corroborated by the import of the impugned gold on their return journey. Government is inclined to uphold the observations made by the lower authorities and the penalty imposed on the applicants under Section 114(i) of the Customs Act, 1962 is proper and justifiable and should act as a deterrent for others contemplating similar scheme.

- 18. As regards the LED television sets brought by the passengers, the Government notes that the same has been dealt with at length by the lower authorities and the Government is not inclined to interfere in the same.
- 19. The Government finds that the penalty under Section 112 (a) of the Customs Act, 1962 is imposable on a person who has made the goods liable for confiscation. For the aforesaid reasons wherein it is held that the applicants had mensrea to evade. Customs duty, the penalties imposed on the applicants is proper and commensurate with the acts of omission and commission committed by all of them. Government is not inclined to interfere in the same and observes that such penalty should act as a deterrent in future.
- 20. In view of the above, the Government hereby dismisses all the revision applications filed by the applicants and upholds the order of Appellate Authority.

(SHRAWAN KUMAR)

Principal Commissioner & ex-officio

Additional Secretary to Government of India

Z_69-28\ ORDER No. /2021-CUS (SZ) /ASRA/

DATED 25-10.2021

To,

- 1) Smt. Sivaguru Sumathi: 78/14 Indra Gandhi Salai, kamarajar Nagar, 2nd Street, Panruti, Cuddalore- 607 106.
- 2) Shri. T.C.Venkatesan: 52, Neruchipettai, Pudupettai, Panruti, Cuddalore- 607 106.
- 3) Shri. N. Kaliyamoorthy: no.10, Jayapriya Nagar, Panruti, Cuddalore-607 106.
- 4) Shri. R. Somasundaram: 7/21, Vallalar Street Panruti, Cuddalore- 607
- 5) Shri. N. Ramesh: 23, Avvaiputhu Street, Panruti, Cuddalore- 607 106.
- 6) Shri. N. Mathivanan: 1284, Ganapathy Nagar, L.N. Puram, Panruti, Cuddalore- 607 106.
- 7) Shri. K. Lognathan: 119, G. Vizhamangalam Patai, Panruti, Cuddalore-607 106.
- 8) Shri. B. Sivaguru: 78/14, Indragandhi Salai, Police Line 2nd Stret, Kamrajar Nagar Pettai, Panruti, Cuddalore- 607 106.
- 9) Smt. T. Chandra: 15, Gopal Street, Panruti, Cuddalore- 607 106.
- 10) Shri. B. Durai: 9, Police Line 3rd Street, Panruti, Cuddalore- 607 106.

- 11) Shri. S. Thiyagarajan: 15, Gopal Street, Panruti, Cuddalore- 607 106.
- 12) Shri. N. Suresh: 29E/11, Mani Nagar, L.R. Palayam, Panruti, Cuddalore- 607 106.
- 13) Shri. P. S. Ranganathan: No.1, Someshwaran Koli Street, Panruti, Cuddalore- 607 106.
- 14) The Commissioner of Customs, Chennai -I Commissionerate, New Custom House, Meenambakam, Chennai-600 027.

Copy to:

- 1: Shri N. Viswanathan, Advocate, Flat No. 8-A, (off) "RAMS" #26, South Mada Street, Srinagar Colony, Saidapet, Chennai- 600 015.
- 2. Sr. P.S. to AS (RA), Mumbai.
- 3. Guard File.
- File Copy.