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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F. No. 373/228-239/B/2018-RA/562 Date of Issue 14.02.22

ORDER NO. H3-54/2022 CUS (SZ)/ASRA/MUMBAI DATED (6.02.2022 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. . Shri. K. Murugan, (ii). Shri. . S. Ayyasamy,
(iii). Shri. A. Murugesan, (iv). Shri. A. Vaithyanathan,
(v). Shri. G. Maheswaran, (vi). Shri. T. Pushpanathan,
(vii). Shri. P. Joseph, (viii). Shri. K. Srinivasan,
(ix). Shri. C. Arivazhagan, (x). Shri. S. Arokkiyasamy,
(xi). Shri. T. Michael Ramesh and (xii). Shri. U. Suthakar

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 12 Orders-in-Appeal No. TCP-CUS-000-APP-128-139-18 dated 31.07.2018 [A.No. C24/63 to 66 & 69 to 76/2018-TRY(CUS)] passed by the Commissioner of GST, Service Tax & C.E.X. Trichirappalli - Pin : 620 001.



ORDER

These 12 revision applications have been filed by (i). Shri. K. Murugan, (ii). Shri. S. Ayyasamy, (iii). Shri. A. Murugesan, (iv). Shri. A. Vaithyanathan, (v). Shri. G. Maheswaran, (vi). Shri. T. Pushpanathan, (vii). Shri. P. Joseph, (viii). Shri. K. Srinivasan, (ix). Shri. C. Arivazhagan, (x). Shri. S. Arokkiyasamy, (xi). Shri. T. Michael Ramesh and (xii). Shri. U. Suthakar (herein referred to as the Applicants) against the Orders-in-Appeal No. TCP-CUS-000-APP-128-139-18 dated 31.07.2018 [A.No. C24/63 to 66 & 69 to 76/2018-TRY(CUS) passed by the Commissioner of GST, Service Tax & C.Ex (Appeals), Trichirappalli – Pin : 620 001.

2. All the above mentioned 12 Revision Applications pertain to gold jewellery / gold chains 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. The brief facts of the case are that the Officers of DRI, CZU, Chennai had an intelligence that a smuggling syndicate of Singapore was indulging in smuggling of jewellery/crude gold bars through Chennai/Trichy Airports using some passengers as carriers. Accordingly, a surveillance was maintained on 08.02.2017 outside the arrival hall and in the car parking area of the Chennai Airport. The officers of DRI intercepted three persons while they were receiving gold jewellery from some International passengers who had arrived from Singapore. The search of these 3 persons led to the recovery of some Indian currency, gold weighing about 699.400 grams of 999 purity, totally valued at Rs. 20,90,506/-. These 3 persons revealed that some more passengers carrying gold would be arriving at Trichy airport. Based on this input, nine passengers including 6 of the applicants namely viz, S/Shri. (i). Pushpanathan, (ii). Arokkiyasamy. (iii). Michael Ramesh, (iv). Joseph, (v). Suthakar and (vi). Arivazhagan were all intercepted at Trichy and gold / jewellery as detailed in Table 01 below were recovered from them. Simultaneously, on the same day i.e. 08.02.2017, based on further intelligence, 4 more persons, among them one



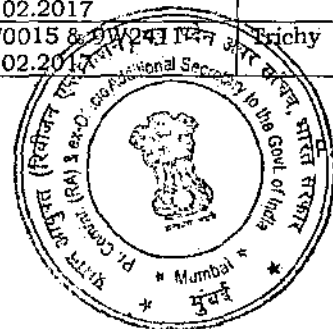
applicant viz (vii). K. Srinivasan were intercepted at Trichy Airport and gold as detailed in Table 01 was recovered. The intelligence was developed further and based on the whatsapp messages on the mobile phone of one of the apprehended persons, 4 more persons all of whom are among the applicants namely viz, viii). Karuppan Murugan, (ix). Arumugam Murugesan, (x). Karuppan Ayyasamy and (xi). Apparasu Vaidhyanathan were intercepted at Chennai jointly by AIU, Chennai and gold as detailed at Table 01 below, were recovered. On further follow up action, another person viz (xii). G. Maheswaran who is also an applicant was intercepted by AIU, Chennai and gold as detailed at Table 01 below, was recovered from him. Thus, in this entire operation conducted by DRI, CZU alongwith Customs, Chennai, 28 persons involved in the case were intercepted and gold totally weighing 2766.300 gms, collectively valued at Rs. 82,68,476/- alongwith Indian currency amounting to Rs. 3,86,400/- were recovered and seized. The details of the flight nos etc pertaining to the applicants are as detailed at Table No. 02, below. The details of the gold recovered from the applicants are as given at Table-01, below.

TABLE No. 01

Sr. No.	Name	Quantity of gold seized in gms.	Value in Rs.	Description of gold seized
1	Shri. Karuppan Murugan	99.900	2,98,601/-	Gold jewellery
2	Shri. Karuppan Ayyasamy	224.800	6,71,927/-	Gold jewellery
3	Shri. Arumugam Murugesan	99.900	2,98,601/-	Gold jewellery
4	Shri. Apparasu Vaidhyanathan	99.900	2,98,601/-	Gold jewellery
5	Shri. G. Maheswaran	124.900	3,73,326/-	Gold jewellery
6	Shri. T. Pushpanathan	99.500	2,97,406/-	Gold chain
7	Shri. P. Joseph	99.500	2,97,406/-	Gold chain
8	Shri. K. Srinivasan	99.500	2,97,406/-	Gold chain
9	Shri. C. Arivazhagan	99.500	2,97,406/-	Gold chain
10	Shri. S. Arokkiyasamy	99.500	2,97,406/-	Gold chain
11	Shri. T. Michael Ramesh	99.500	2,97,406/-	Gold chain
12	Shri. U. Suthakar	99.500	2,97,406/-	Gold chain

TABLE No. 02

Sr. No.	Name	Arrival From	Flight Details	Intercepted at
1	Shri. Karuppan Murugan	Singapore	MH180/08.02.2017	Chennai
2	Shri. Karuppan Ayyasamy	Singapore	MH180/08.02.2017	Chennai
3	Shri. A. Murugesan	Singapore	MH180/08.02.2017	Chennai
4	Shri. A. Vaidhyanathan	Singapore	MH180/08.02.2017	Chennai
5	Shri. G. Maheswaran	Singapore	TZ502/08.02.2017	Chennai
6	Shri. T. Pushpanathan	Singapore	9W0015 & 9W2411-08.02.2017	Trichy
7	Shri. P. Joseph	Singapore	9W0015 & 9W2411-08.02.2017	Trichy



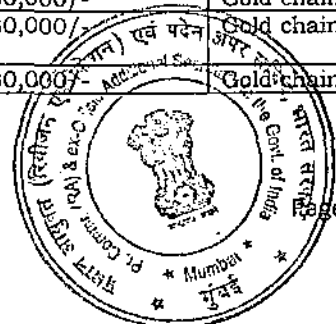
8	Shri. K. Srinivasan	Singapore	TR2664/08.02.2017	Trichy
9	Shri. C. Arivazhagan	Singapore	9W0015 & 9W2411-08.02.2017	Trichy
10	Shri. S. Arokkiyasamy	Singapore	9W0015 & 9W2411-08.02.2017	Trichy
11	Shri. T. Michael Ramesh	Singapore	9W0015 & 9W2411-08.02.2017	Trichy
12	Shri. U. Suthakar	Singapore	9W0015 & 9W2411-08.02.2017	Trichy

4. Investigations carried out had revealed that the smuggling of gold was initiated by some persons based at Singapore who would identify passengers at Singapore / Malaysia. The photographs / flight details / quantity of gold etc carried by these passengers travelling to India would be sent to certain persons based at Chennai / Trichy who were employed by the Singapore based persons. These accomplices based at Chennai / Trichy would identify the passengers, receive, inventorize and account for the smuggled gold. The smuggled gold would be disposed of by these accomplices as per the instructions and directions of the Singapore based group.

5. After due process of the law, the Original Adjudicating Authority viz Jt. Commissioner of Customs (Preventive), Trichy vide a single Order No. TCP-CUS-PRV-JTC-046-18 dated 07.03.2018 (DOI:16.03.2018) [C.No. VIII/10/37/2017-Cus.Adj], ordered for the absolute confiscation of the entire aforesaid quantity of gold viz 2766.300 grams valued at Rs.82,68,476/- under Section 111(d) and 111(l) of the Customs Act, 1962 alongwith the Indian currency of Rs. 3,86,400/-. The details of the penalty imposed on the applicants is as given at Table-03, below.

TABLE No. 3

Sr. No.	Name	Quantity of gold seized in gms.	Value in Rs.	Penalty imposed u/s 112 (a) of C.A. 1962 in Rs.	Description of gold seized
1	Shri. K. Murugan	99.900	2,98,601/-	30,000/-	Gold jewellery
2	Shri. K. Ayyasamy	224.800	6,71,927/-	65,000/-	Gold jewellery
3	Shri. A. Murugesan	99.900	2,98,601/-	30,000/-	Gold jewellery
4	Shri. A. Vaithyanathan	99.900	2,98,601/-	30,000/-	Gold jewellery
5	Shri. G. Maheswaran	124.900	3,73,326/-	35,000/-	Gold jewellery
6	Shri. T. Pushpanathan	99.500	2,97,406/-	30,000/-	Gold chain
7	Shri. P. Joseph	99.500	2,97,406/-	30,000/-	Gold chain
8	Shri. K. Srinivasan	99.500	2,97,406/-	30,000/-	Gold chain
9	Shri. C. Arivazhagan	99.500	2,97,406/-	30,000/-	Gold chain
10	Shri. S. Arokkiyasamy	99.500	2,97,406/-	30,000/-	Gold chain
11	Shri. T. Michael Ramesh	99.500	2,97,406/-	30,000/-	Gold chain
12	Shri. U. Suthakar	99.500	2,97,406/-	30,000/-	Gold chain



6. Aggrieved by this order, the Applicants filed an appeal with the appellate authority viz, Commissioner of GST, Service Tax & C.Ex, Trichirappalli – Pin : 620 001 who vide a common Order-in-Appeal No. TCP-CUS-000-APP-128-139-18 dated 31.07.2018 [A.No. C24/63 to 66 & 69 to 76/2018-TRY(CUS) upheld the absolute confiscation alongwith the penalty imposed 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. 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 could be released on payment of redemption fine and duty.

7.03. that the applicants had made a written submission to the adjudicating authority alongwith purchase bills indicating that the gold belonged to them and had been purchased by them for use by their family.

7.04. that they were all eligible to import gold under the notification at concessional rate as they have all stayed at Singapore for over 10 months. This plea had not been considered by both the lower adjudicating / appellate authorities even though they had raised this plea.

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

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

7.07. that the gold had not been concealed.

7.08. 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

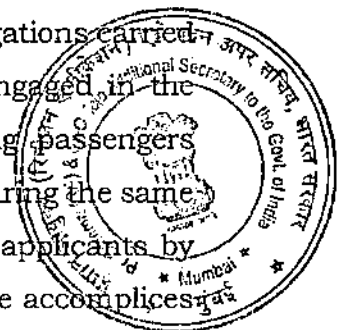
Under the circumstances of the case, in their revision applications, the applicants have prayed that the order passed by the appellate authority may be set aside and to permit the re-export of the gold or to release the impugned gold on payment of concessional rate of duty and to reduce the penalty imposed 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 12 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 mentioned in the revision applications 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 had opted for the green channel and were intercepted at the exit gate or outside 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 a view to evade the Customs duty. The applicants had admitted that the gold jewellery / chains had been kept concealed either on their person or 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.

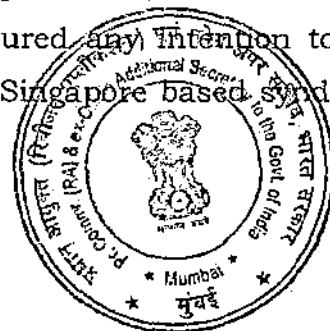
10. At the outset, from the facts of the case, the Government notes that this is a case of smuggling of gold jewellery / chains carried out by a syndicate based at Singapore which had placed their designated persons at Chennai / Trichy to assist and facilitate them in their smuggling activity by collecting the gold jewellery / chains from the incoming passengers. Investigations carried out had revealed that the Singapore based syndicate had devised an elaborate method by which they would identify genuine passengers at Singapore / Malaysia departing to India and lure them with monetary benefits and in exchange make such passengers to carry the gold jewellery / chains on their behalf with instructions to hand over the same to their designated persons / accomplices based at Chennai / Trichy who would be waiting outside the arrival airport to collect the same. The investigations carried out reveals that the syndicate based at Singapore was actively engaged in the smuggling activity in an organised manner and had been using passengers returning to India as their accomplices to smuggle gold without declaring the same and evade payment of Customs duty. Government notes that the applicants by agreeing to carry the gold jewellery / chains had unwittingly become accomplices



of the syndicate. Government notes that this co-ordinated activity using different passengers to smuggle gold / crude gold jewellery is distinct from individuals bringing gold jewellery for personal use.

11.1. The Government notes that all the applicants had initially stated that the gold chains / jewellery found in their possession did not belong to them and that the same had been handed over to them by some persons based at Singapore with instructions to hand over the same to their accomplices at Chennai / Trichy. These applicants had admitted that they had carried the gold jewellery / chains for a monetary consideration and that they did not possess any money to purchase the gold jewellery / chains and were not aware about the actual owners. They had also admitted that they did not have any money to pay the duty. Later, during the adjudication of the case they submitted that they were owners of the gold chains / jewellery found in their possession and had money in their bank accounts to pay the Customs duty. They also stated that they by virtue of their stay abroad for period exceeding 6 months, they were eligible to import the gold chains / jewellery. The Government notes that these averments had been made by the applicants both before the original adjudicating authority and appellate authority which has dealt with the same in great detail and rejected their plea. Government for the observations stated at para 10 above, finds that the applicants were part of a syndicate and had indulged in the smuggling of the gold jewellery / chains in an organised manner. The applicants had acted as part of a syndicate and not as individuals to smuggle the gold jewellery / chains and hence, the Government finds that the lower authorities had rightly held that they were not eligible to import the impugned gold. Government finds that this averment on the issue of eligibility made by the applicants, is an afterthought put forth maybe at the advice of their Counsel or member of the syndicate to somehow get a beneficial order.

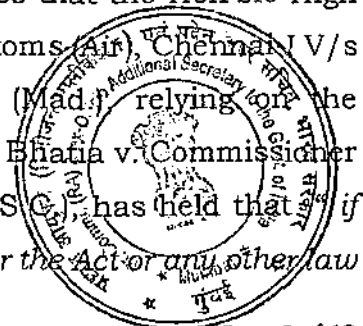
11.2. The applicants have made a plea that they had been intercepted before crossing the green channel and had sought the CCTV footage. Government finds that this plea of the applicants too is an afterthought made only at the late stage. For the reasons stated at para 10 above, the applicants had admitted their role in the smuggling activity and had not harboured any intention to pay the Customs duty. Also, being accomplices of the Singapore based syndicate, the



applicants had not acted as distinct individuals but collectively and in a premeditated manner participated in the smuggling of the case. The applicants are aware that the electronic data are retained only for a short duration and have sought the same knowing too well that same would not be available and have made an attempt to retrieve some benefit from this situation by taking this plea. The non-availability of the CCTV at this stage, does not exonerate the applicants of the activities indulged into and carried out by them. It is clear that impugned gold found in their possession did not belong to them and they 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 and they would have made a declaration is clearly an afterthought.

11.3. From the evidences, statements, similar quantity, similar method of concealment, designated person waiting outside the airport, supplier being someone else, etc the Government notes that all this is a case of organised smuggling. Considering the quantum of gold collectively 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.

12. 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 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”.

13. 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.

14. 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.

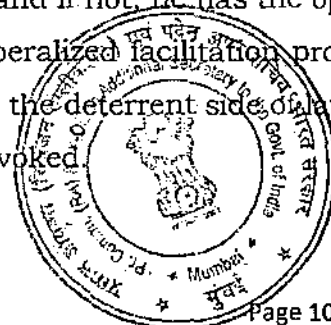
71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment 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.

15. 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 and brazen manner as a syndicate which has all been discussed in the aforesaid paras. The option to allow redemption of the 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 quantity, similar type of gold carried using same modus of concealment, not declaring to Customs and handing over to accomplices etc confirms that these applicants by their acts abetted with the syndicate in consciously attempting to collectively smuggle 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.



16. 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.

17. With regard to the request by the applicants 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.

18. For the aforesaid reasons, Government is inclined not to interfere with the orders passed by the appellate authority and is inclined to dismiss the revision applications filed by the applicants.

19. Revision Applications are thus, dismissed.

Shrawan Kumar
10/2/22
(SHRAWAN KUMAR)

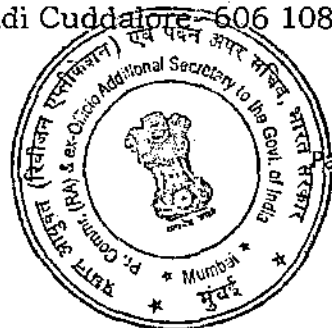
Principal Commissioner & ex-officio
Additional Secretary to Government of India

43-54
ORDER No. /2022-CUS (SZ) /ASRA/

DATED 10.02.2022

To,

- 1) Shri. K. Murugan, S/o. Shri. Karuppan, East Street, Panayangal, Sithalur (Post), Kallakurichi, Villupuram- 606 206.
- 2) Shri. S. Ayyasamy, S/o. Shri. Singaram Karuppan, No. 3/18, East Street, Panayangal, Sithalur (Post), Kallakurichi, Villupuram- 606 206.
- 3) Shri. A. Murugesan, S/o Shri. Arumugam, Sirumangalam, Pukkaravadi, Kallakurichi, Villupuram- 606 204.
- 4) Shri. A. Vaithyanathan, S/o Shri. Apparasu, No. 15, Gurumana Kudi, (ST), Mondathur, Vaitheeswaram Koli, Nagapattinam, Dist- 609 112.
- 5) Shri. G. Maheswaran, S/o Shri. Ganeshan, Old No. 44C, New No. 1/173, Mariamman Koil Street, Mangaloor, Tittaguidi Cuddalore- 606 108.



- 6) Shri. T. Pushpanathan, S/o Shri. Balasubramanian, Veeravanallur, Sithamalli Taluk, Thiruvarur Dist.
- 7) Shri. P. Joseph, S/o Shri. Pitchaya Pillai, Panampatti, Mathiyallur, Illupur Taluk, Pudukottai Dist- 622 101.
- 8) K. Srinivasan, S/o Kannan, No. 3/149, Main Road, Ramapuram, Kattumannar Koil Taluk, Cuddalore- 608 302.
- 9) Shri. C. Arivazhagan, S/o Shri. Chinnasamy, 3/32, Singali Street Kulumur Post, Senthirai Taluk, Perambalur Dist.
- 10) Shri. S. Arokkiyasamy, S/o Shri. Soosaimanickam, Udyar Street, Neivasal, Thirumavam, (Taluk), Pudukottai Dist- 622 503.
- 11) T. Michael Ramesh, S/o Shri. Thurai, No. 83, Ambedkar Nagar, Kulipirai Post, Pudukottai Dist.
- 12) Shri. U. Suthakar, S/o Shri. Uthirpathi No.39, North Street, Sathamangalam, Ariyalur Taluk, Ariyalur Dist.
- 13) Commissioner of Customs (Preventive), No. 1 Williams Road, Cantonment, Tiruchirappalli - 620 001.

Copy to:

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