

**SPEED POST**



F. No. 373/181/B/2018-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue 20/3/23

Order No. 103/23-Cus dated 20.3.2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal No. 91/2018-TRY(CUS) dated 16.05.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. Mohamed Ali, Madurai

Respondent : The Commissioner of Customs (P), Tiruchirappalli

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**ORDER**

A Revision Application, bearing No. 373/181/B/2018-RA dated 25.06.2018, has been filed by Sh. Mohamed Ali, Madurai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 91/2018-TRY(CUS) dated 16.05.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has upheld the order of the Assistant Commissioner of Customs, Tiruchirappalli International Airport, bearing No. 250/2017 dated 01.12.2017, vide which 04 gold cut pieces of 24 carat purity, totally weighing 140 grams, collectively valued at Rs. 3,82,768/-, brought by the Applicant, had been absolutely confiscated under Sections 111(d), 111(i), 111(l), 111(m) & 111(o) of the Customs Act, 1962. Besides, penalty of Rs. 40,000/- was also imposed on the Applicant, under Sections 112(a) & (b) of the Act, *ibid*.

2. Brief facts of the case are that the Applicant arrived at Tiruchirappalli International Airport, on 30.11.2017, and was intercepted by the Customs officers when he tried to cross the DFMD which indicated the presence of gold items in his presence. Even after the indication by the DFMD, the Applicant denied having any dutiable items like gold in his belongings. On re-scanning his belongings, it was found that 04 gold cut pieces were concealed beneath the bottom groove of his chappal. On questioning, he informed that he had brought the gold cut pieces for monetary consideration and he did not want to declare the gold in Customs Declaration Slip or orally to the Customs for evading payment of Customs duty. He also could not produce any bill for the purchase of the gold cut pieces. The Government approved gold appraiser certified the gold cut pieces to be unfinished and of foreign origin of 24 carat purity, totally weighing 140 grams and collectively valued at Rs. 3,82,768/-. The original authority absolutely confiscated the offending gold and imposed penalty as mentioned above. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals) which was rejected.

3. The revision application has been filed, mainly, on the grounds that the gold pieces were purchased by the Applicant in a jewellery shop in Malaysia and intended to bring it to India, keeping in his chappal for safety purposes; that he was not allowed any benefit of duty-free allowance of Rs. 50,000/- as per Baggage Rules, 2016; and that import of gold

is not prohibited. Accordingly, it has been prayed that orders of lower authorities may be set aside and gold may be ordered to be redeemed for re-export on payment of fine as it may be allowed to be redeemed on payment of appropriate duty, fine and reduced penalty.

4. Personal hearing was fixed on 06.03.2023 which was adjourned to 20.03.2023 at the request of Sh. A. Selvaraj, Consultant of the Applicant. In the hearing held on 20.03.2023, Sh. A. Selvaraj, Consultant appeared for the Applicant and submitted additional written submissions which were taken on record. He requested that the goods may be allowed to be redeemed on payment of fine and duty. No one appeared for the department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed that the Applicant did not declare the gold brought by him, as required under Section 77 of Customs Act, 1962, to the customs authorities at the airport. Further, the Applicant admitted the recovery of gold from him and that he committed the offence for monetary benefit when he was questioned about the same. Further, he could not produce any bill for the purchase of the gold cut pieces. Moreover, the gold was ingeniously concealed in a specially made groove in the chappal. No prudent person will believe that gold was concealed inside the chappal for safety purposes, as sought to be contended by the Applicant.

6. As per Section 123 of Customs Act 1962, in respect of the gold and manufactures thereof, the burden of proof that such goods are not smuggled is on the person, from whom goods are recovered. The Applicant did not declare the gold items as stipulated under Section 77 of the Act, *ibid*. No documents evidencing ownership and licit purchase were produced at the time of interception. The gold ~~was~~<sup>is</sup> concealed ingeniously. Hence, the intention to smuggle is manifest. The Applicant has, thus, failed to discharge the burden placed on him, in terms of Section 123, *ibid*. Keeping in view the facts and circumstances of the case and as the Applicant has failed to discharge the onus placed on him in terms of Section 123, the Government agrees with the lower authorities that the

seized goods were liable to confiscation under Section 111 *ibid* and the penalty was imposable on the Applicant.

7.1 The Government observes that import of gold and articles thereof in baggage is allowed subject to fulfillment of certain conditions. In the present case, it is not even contended that these conditions were fulfilled by the Applicant herein. It is settled by a catena of judgments of Hon'ble Supreme Court that goods, in respect of which conditions subject to which their import/export is allowed are not fulfilled, are to be treated as 'prohibited goods'. [Ref: Sheikh Mohd. Omer {1983 (13) ELT 1439 (SC), Om Prakash Bhatia {2003 (155) ELT 423 (SC)} & Raj Grow Impex LLP {2021 (377) ELT 145 (SC)}]. Further, the Hon'ble Madras High Court (i.e. the Hon'ble jurisdictional High Court) has, in the cases of Malabar Diamond Gallery P. Ltd. {2016 (341) ELT 465 (Mad.)} and P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, taken this view specifically in respect import of gold in baggage. Hence, there is no doubt that the goods seized in the present case are to be held to be 'prohibited goods'.

7.2 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

8. The original authority has denied the release of seized goods on redemption fine under Section 125 of Customs Act, 1962. The Government observes that, in terms of Section 125 of the Customs Act, 1962, the option to release 'prohibited goods', on redemption fine, is discretionary, as held by the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. In the case of Raj Grow Impex (*supra*), the Hon'ble Supreme Court has held "*that 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; has to be based on relevant considerations.*" Further, in the case of P. Sinnasamy (*supra*), the Hon'ble Madras High Court has held that "*when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason".*" Hon'ble Delhi High Court has, in the case of Raju Sharma [2020 (372) ELT 249 (Del)], relying upon the

judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], held that "*Exercise of discretion by judicial, or quasi-judicial authorities, merits interference only where the exercise is perverse or tainted by patent illegality, or is tainted by oblique motive.*" Such a case is not made out. Hence, the Commissioner (Appeals) has correctly refused to interfere with the order of absolute confiscation.

9.1 It has been prayed by the Applicant to permit re-export of gold pieces seized from him. The Government observes that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Customs Act, 1962, which reads as follows:

"Temporary detention of baggage.- Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under Section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his name."

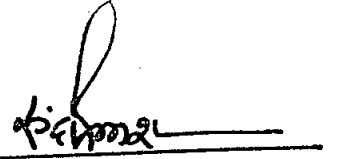
9.2 On a plain reading of Section 80 it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of Deepak Bajaj {2019 (365) ELT 695 (All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export under Section 80 of the Act, *ibid*. In this case, as already held, the Applicant had made no declaration in respect of the subject goods. Further, the Hon'ble Delhi High Court has, in the case of Jasvir Kaur vs. UOI {2019 (241) ELT 521 (Del.)}, held that re-export "cannot be asked for as of right-----". The passenger cannot be given a chance to try his luck and smuggle Gold into the country and if caught he should be given permission to re-export."

9.3 Hence, the request for re-export of gold pieces recovered from Applicant does not merit consideration.

10. The case laws relied upon by the Applicant in support of his various contentions are either not relevant in the facts of this case or are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

11. In the facts and circumstances of the case, the quantum of penalty imposed is just and fair.

12. In view of the above, the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

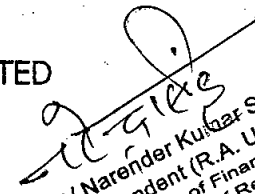
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Order No. 103/23-Cus dated 20.3.2023

Copy to:

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2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Trichy-620001.
3. Sh. A. Selvaraj, Superintendent of Customs (Retd.), 68, Krishnamurthyagar, Triruchirappalli-620021.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED



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