

SPEED POST

F. No. 380/54/B/SZ/2020-RA & others
 GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 (DEPARTMENT OF REVENUE)

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

Date of Issue 28/4/23

Order No. 160-163/23-Cus dated 28-04-2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Application(s), as mentioned in Column 'B' of the 'Table-I' below, filed under Section 129DD of the Customs Act, 1962, against the Orders-in-Appeal No(s). as mentioned in Column 'E' of the 'Table-I' below, passed by the Commissioner of Customs (Appeals), Chennai.

Applicant(s) : 1. Pr. Commissioner of Customs (Airport), Chennai
 2. Sh. Amjath Ibrahim, Ramanathapuram

Respondent(s) : As mentioned in Column 'C' of Table-I, below.

Table-I

S. No.	File No.	Name of the Respondent (s) S/Sh./Ms.	OIO No./ Date	OIA No./ Date	Remarks
A	B	C	D	E	F
1.	380/54/B/SZ/2020-RA dated 06.11.2020 02 nos of gold bars, totally weighing 781 grams, Value- Rs. 26,70,239/-	Nagamannam a, Kadapa	33/2020-21 dated- 23.05.2020 JC, Chennai	193/2020 17.08.2020	Commissioner (Appeals) reduced the Penalty u/s 112(a) of the Customs Act, 1962 from Rs. 2,00,000/- to Rs. 1,50,000/- and allowed redemption for re-export by imposing fine of Rs...

					3,50,000/-.
2.	380/55/B/SZ/2020-RA dated 17.11.2020 03 nos of gold bars and 02 nos of gold cut bits, totally weighing 779.5 grams, collectively valued at Rs. 26,65,110/-	Sūmalatha Lakkireddy, YSR District	27/2020-21- Commissionerate -I dated- 06.05.2020 JC, Chennai	194/2020 19.08.2020	Commissioner (Appeals) reduced the Penalty u/s 112(a) of the Customs Act, 1962 from Rs. 2,60,000/- to Rs. 1,70,000/- and allowed redemption for re-export by imposing fine of Rs. 3,50,000/-.
3.	380/64/B/SZ/2020-RA dated 31.12.2020 04 gold chains and 02 gold bangles, totally weighing 997 grams, collectively valued at- Rs. 33,26,989/-	Amjath Ibrahim, Ramanathapu ram	336/2019-20- Commissionerate -1 dated 18.01.2020 JC, Chennai	257/2020 03.11.2020	Commissioner (Appeals) reduced the Penalty u/s 112(a) of the Customs Act, 1962 from Rs. 3,50,000/- to Rs. 2,70,000/- and allowed redemption for re-export by imposing fine of Rs. 4,50,000/-.
4.	373/30/B/2021-RA dated 02.02.2021 04 gold chains and 02 gold bangles, totally weighing 997 grams, collectively valued at- Rs. 33,26,989/-	Pr. Commissioner of Customs (Airport), Chennai	-Do-	-Do-	-Do-

ORDER

Revision Application(s), as mentioned in Column 'B' (Sr. Nos. 1-3) of the 'Table-I' above, have been filed by the Pr. Commissioner of Customs (Airport), Chennai-I (hereinafter referred to as the Applicant department), against the Orders-in-Appeal No(s). as mentioned in Column 'E' of the 'Table-I' above, passed by the Commissioner of Customs (Appeals-I), Chennai. One revision application (mentioned at Sr. No. 4 of the 'Table-I') has been filed by Sh. Amjath Ibrahim, Ramanathapuram. The Commissioner (Appeals) has, vide the respective Orders-in-Appeal, reduced the penalties imposed under Section 112 (a) of the Customs Act, 1962, on the Respondents, and allowed redemption of the offending gold for re-export as mentioned in Column 'F' of the **Table-I**. In all the cases, the original authority, i.e., Joint Commissioner of Customs, Chennai Airport, vide respective Orders-in-Original as mentioned in column 'D' of **Table-I**, had imposed penalty on the Respondents herein under Section 112(a) of the Customs Act, 1962, in addition to orders of absolute confiscation of offending goods.

2. Brief facts of the cases are that the Respondents herein (in the cases at Sr. 1-3) had been apprehended while smuggling gold/gold articles, in their baggage, upon arrival at Chennai International Airport. They had attempted to remove these gold/gold articles from the Customs Area without making any declaration in the 'Customs Declaration Form' and upon oral inquiry also denied carrying any contraband. In all the cases, the respective original authority ordered absolute confiscation of offending goods and also imposed penalties under Section 112(a) of the Act, *ibid* on the Respondents. Aggrieved, the Respondents herein filed their respective appeals, which have been partly allowed by the Commissioner (Appeals), by way of reducing penalties imposed under Sections 112(a) and by allowing redemption of the offending goods for re-export upon payment of fine.

3.1 The Revision Applications have been filed by the Applicant department, mainly, on the grounds that the Respondents herein had attempted to smuggle gold by concealment; that the Respondents were not owners of the goods but were merely carriers; that

offending gold is 'prohibited'; and that re-export can be allowed under Section 80 of the Customs Act, 1962, only if a true declaration had been made under Section 77 of the Act.

3.2 The Revision Application, as mentioned at Sr. 4 in **Column 'B' of the Table-I**, has been filed, mainly, on the grounds that he is the owner of the gold; that the gold was not ingeniously concealed; and that redemption fine and penalty imposed are excessive and be reduced.

4. Personal hearings were fixed on 18.04.2023, 24.04.2023 & 28.04.2023. Sh. Chandra Mohan, AC appeared for the department in the hearings held on 28.04.2023 and reiterated the contents of the RAs. Sh. B. Kumar, Consultant appeared for Sh. Amjath Ibrahim on 18.04.2023. No one appeared for the other Respondents (private parties) on any of the dates fixed for hearing. Since sufficient opportunities have been provided, these cases are taken up for disposal.

5. The Government observes that it is not disputed that the gold/gold items were recovered from the Respondents. It is on record that the Respondents had not made any declarations in respect thereof, as required under Section 77 of the Customs Act, 1962. They also did not have any documents or evidence showing lawful possession of the offending gold/gold articles. Further, it is on record that the Respondents herein had not fulfilled the conditions subject to which the gold/gold articles could have been imported in baggage.

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 Respondents did not declare the gold/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 Respondents have, thus, failed to discharge the burden placed on them, in terms of Section 123, *ibid*. Keeping in view the facts and circumstances of each of the cases under consideration and as the Respondents

have failed to discharge the onus placed on them in terms of Section 123, the Government agrees with the lower authorities that the seized gold/gold items are liable to confiscation under Section 111 *ibid* and, consequently, the penalty was imposable on the Respondents.

7.1 The Government observes that in the case of Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors {1971 AIR 293}, the Hon'ble Supreme Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "*Any prohibition means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition*". In the case of Om Prakash Bhatia Vs. Commissioner of Customs, Delhi {2003(155)ELT423(SC)}, the Hon'ble Supreme Court has held that "*if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods*". In its judgment, in the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (2021-TIOL-187-SC-CUS-LB), the Hon'ble Supreme Court has followed the judgments in Sheikh Mohd. Omer (*supra*) and Om Prakash Bhatia (*supra*) to hold that "*any restriction on import or export is to an extent a prohibition; and the expression "any prohibition" in Section 111(d) of the Customs Act includes restrictions.*"

7.2 Hon'ble Madras High Court (i.e. the Hon'ble Jurisdictional High Court) has taken an identical view, specifically in respect of gold. [Ref. Malabar Diamond Gallery P. Ltd. {2016 (341) ELT 65 (Mad.) & P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}].

7.3 Thus, following the ratio of the aforesaid judgments, there is no doubt that the subject gold/gold items are 'prohibited goods', as the conditions subject to which these could have been imported in baggage, are not fulfilled.

8. The Government observes that the option to release seized goods on redemption fine, in respect of "prohibited goods", is discretionary. This position has been affirmed by 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 M/s Raj Grow Impex LLP & Ors (*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; and has to be based on the 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 ----- 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."* Thus, the discretion exercised by the original authority could have been interfered with, only if it suffered from any of the vices indicated by the Hon'ble Courts, as above. Such a case has not been made out by the Commissioner (Appeals). Rather the Commissioner (Appeals) appears to have supplanted his discretion for that of the original authority, which is not permissible in law. As such, the Commissioner (Appeals) has erred by interfering in the matter by allowing redemption.

9.1 Further, as far as re-export of offending goods is concerned, 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."

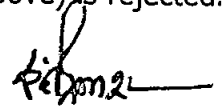
9.2 On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of Deepak Bajaj {2019 (365) ELT 695 (All.)}, held that a declaration under Section 77 is a

sine qua non for allowing re-export under Section 80 of the Act, *ibid*. In these cases, it is not in dispute that the Respondents had made not made a true 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 Commissioner (Appeals) has also erred in permitting re-export.

10. In the subject cases, the original authority has imposed penalties ranging between 7.5% to 10% of the value of the offending goods, which cannot be called excessive or harsh by any stretch of imagination. Thus, by further reducing the penalties, the Commissioner (Appeals) has granted relief, which is not merited in the facts and circumstances of these cases. As such, the quantum of penalty imposed by the original authority, in respective cases, is liable to be restored and is restored.

11. In view of the above, the revision applications at Sr. No. 1-3 of the Table-I above are allowed. Consequently, the Orders-in-Appeal impugned herein are set aside. The revision application filed by Sh. Amjath Ibrahim (at Sr. No. 4 of Table-I above) is rejected.



(Sandeep Prakash),

Additional Secretary to the Government of India

1. Pr. Commissioner of Customs, Commissionerate-I
Chennai Airport, New Customs House,
Meenambakkam, Chennai-600016
2. Sh. Amjath Ibrahim, S/o Sh. Seeni Ibrahim,
19/249A, North Street, Kilakarai,
Ramanathapuram, Tamil Nadu-623517

Order No. 160-163/23-Cus dated 28/4/2023

Copy to:

1. The Respondents:

Name of the Respondent(s) S/Sh./Ms.
Smt. Nagamannama, W/o Sh. Venkata Ramana Kurapati, C/o Sh. C. Venkatah, Y Kota Obulavari Palli, Kadapa, Andhra Pradesh-516108
Smt. Sumalatha Lakkireddy, W/o Sh. Sivashankarreddy Lakkireddy, S. Upparapalli, Rlykodur, YSR District, Andhra Pradesh-516101
Sh. Amjath Ibrahim, S/o Sh. Seeni Ibrahim, 19/249A, North Street, Kilakarai, Ramanathapuram, Tamil Nadu-623517
Pr. Commissioner of Customs, Commissionerate-I, Chennai Airport, New Customs House, Meenambakkam, Chennai-600016

2. The Commissioner of Customs (Appeals-I), 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
3. PPS to AS(RA)
4. Guard-file.
5. Spare Copy.
6. Notice board.

ATTESTED

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