

**SPEED POST**



F. No. 373/308/B/SZ/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. 2.10.23

Order No. 180/23-Cus dated 2-05-2023 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, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. TCP-CUS-000-APP-186-18 dated 23.10.2018, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. K. Syed Mohamed, Pudukottai

Respondent : The Commissioner of Customs (P), Tiruchirappalli

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**ORDER**

A Revision Application, bearing No. 373/308/B/SZ/2018-RA dated 12.11.2018, has been filed by Sh. K. Syed Mohamed, Pudukottai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-186-18 dated 23.10.2018, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, whereby the Commissioner (Appeals) has upheld the Order-in-Original No. MDU-CUS-JC-13-2017 dated 22.05.2017, passed by the Joint Commissioner of Customs (Airport), Madurai. Vide the aforementioned Order-in-Original, 03 nos of crude gold chains, totally weighing 133.400 grams and collectively valued at Rs. 3,54,177/-, which were recovered from the Applicant herein, have been absolutely confiscated under Section 111(d), 111(i) & 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 60,000/- was also imposed on the Applicant, under Section 112(a) of the Act, *ibid*.

2. Brief facts of the case are that officers of Directorate of Revenue Intelligence, Zonal Unit, Chennai, (CZU-DRI) based on a specific intelligence, identified and intercepted a group of 7 passengers including Sh. K. Syed Mohamed, the Applicant herein, upon their arrival at Madurai International Airport, from Colombo, on 03.10.2015. Upon being enquired as to whether they were carrying any gold in their baggage or on their person, all the passengers replied in negative and produced their Customs Declaration Form, which was duly filled-in and signed wherein no one had declared any value against the column "Total value of dutiable goods being imported". Upon the search of the baggage of the Applicant herein 03 nos of crude gold chains having purity of 999 carat, totally weighing 133.400 grams, collectively valued at Rs. 3,54,177/- were recovered. Besides other gold items were also recovered from the baggage of rest of the passengers including an abandoned baggage containing gold items found after rummaging of the aircraft. On being enquired, the said passengers stated that they did not have any documents for purchase/import of the said gold recovered from their baggage. In his statement dated 07.10.2015, recorded under Section 108 of the Customs Act, 1962, the Applicant, *inter-alia*, stated that like him many people used to go to Colombo for trading and at times the Colombo traders used to send gold bars and gold jewellery to India through a few traders; that if the traders delivered the gold in India to the persons as informed by the Colombo

traders, they would get upto Rs. 1500 per gram; that the Colombo traders approached him also and due to his family situation he accepted to undertake the activity; that in India, without informing the Customs officers during Customs check, they would bring the gold outside the airport and hand over to the persons as informed by the Colombo trades and receive money; that they would not know the details of those persons waiting outside the airport and the persons themselves would recognize them and take delivery of the gold on giving their commission amount; that he had brought gold twice in that way; that the Colombo traders would hand over the gold inside the Colombo airport for Mihin Lanka flight to India, a trader approached him and handed over three chains informing that the weight of the chains was 133.400 grams and asked him to hand over to a person waiting outside the Madurai airport; that the trader told him that he would get Rs. 4500/- on handing over the chains; and that on agreeing to the terms he received the 03 gold chains. The matter was adjudicated by the original authority who ordered absolute confiscation of the above mentioned gold items. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which has been rejected.

3. The revision application has been filed, mainly, on the grounds that the gold is not a prohibited item; that statement of Applicant was taken under duress and coercion; that he was the owner of the gold, did not conceal the same and he declared the same when enquired about by the officers; that he did not pass through the Green Channel; and that the impugned order be set aside, and gold be allowed to be released or re-exported and penalty be reduced.

4. Personal hearing in the matter was fixed on 10.05.2023, in virtual mode. Sh. Arvind Kumar, Superintendent appeared for the department. Smt. Kamalamalar Palanikumar, Advocate of the Applicant, vide email dated 10.05.2023, requested to pass an order with the available records as she could not join the hearing. Hence, the matter is taken up for disposal based on available records.

5. The Government has carefully examined the matter. It is observed that several allegations such as that the statement of Applicant was recorded under threat or coercion; that he did not pass through the Green Channel etc. have been made. However, the

Government finds that the entire proceedings was covered under a Mahazar dated 03.10.2015, in the presence of two independent witnesses, which also corroborates the sequence of events. As such, the claims that the statement of Applicant was taken under duress or coercion; that he did not conceal the gold and declared the same when enquired by the officers or that he did not pass through the Green Channel are not sustainable.

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. In fact, it is evident from records that the Applicant was part of a group of passengers who were smuggling gold, as carriers, for monetary benefits. 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 gold items 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 of 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 gold items are not 'prohibited goods', cannot be accepted.

8. The Government observes that the original authority had denied the release of seized gold item on payment of redemption fine under Section 125 of Customs Act, 1962. It is settled by the judgment of 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.)], that option to release 'prohibited goods' on redemption fine is discretionary. 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)], 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."* In the present case, the original authority has ordered for absolute confiscation of the gold item, for relevant and reasonable considerations recorded in paras 29.2 to 29.12 of his Order. Therefore, keeping in view the judicial pronouncements above and the facts of the case, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

9.1 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

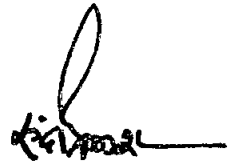
leaving India, the article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his name."

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 this case, the Applicant had made a 'NIL' declaration in the Customs Declaration Form and had denied carrying the subject goods even when asked orally. Further, as correctly pointed out by the original authority, 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 Government finds that the request for re-export was correctly denied by the original authority.

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

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



(Sandeep Prakash)

Additional Secretary to the Government of India

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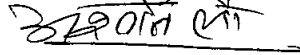
Order No. 180/23-Cus dated 12-05-2023

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli-620001.

2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Smt. P. Kamalamalar, Advocate, No. 10, Sunkrama Street, 2<sup>nd</sup> Floor, Chennai-600001.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

ATTESTED



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