

**SPEED POST**



F. No. 373/290/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...12/05/23

Order No. 181/23-Cus dated 12-05-2023 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-177-18 dated 26.09.2018, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. Jakir Hussain, Sivagangai

Respondent : The Commissioner of Customs (P), Tiruchirappalli

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**ORDER**

A Revision Application, bearing No. 373/290/B/SZ/2018-RA dated 08.10.2018, has been filed by Sh. Jakir Hussain, Sivagangai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-177-18 dated 26.09.2018, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, whereby the Commissioner (Appeals) has upheld the Order-in-Original No. 36/2018 dated 14.02.2018, passed by the Assistant Commissioner of Customs (Airport), Tiruchirappalli. Vide the aforementioned Order-in-Original, 02 nos of round shaped gold items of 24 carat purity, totally weighing 64.500 grams and collectively valued at Rs. 1,91,500/-, recovered from the Applicant, had been absolutely confiscated under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. Besides, penalty of Rs. 20,000/- was also imposed on the Applicant, under Section 112(a) & 112 (b) of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant upon his arrival at Tiruchirappalli Airport, from Malaysia, on 06.06.2017 while he was crossing the Green Channel. On enquiry, it was found that he did not file any Indian Customs Declaration Form. Upon being enquired whether he had brought any valuable or gold in any form or any other dutiable item with him either in person or in his baggage, he replied in negative. On scanning of his stroller bag, 02 nos of round shaped gold items were found concealed inside the wheels of his stroller bag which were examined and certified by the Central Government approved assayer to be of 24 carat purity, totally weighing 64.500 grams and collectively valued at Rs. 1,91,500/-. Upon being asked as to why he did not declare the gold in his Indian Customs Declaration Form, he replied that he would get more profit, if he did not declare the said gold and cleared it without payment of Customs duty. Further, to the query whether he had any convertible foreign currency to pay the customs duty, he replied that he did not bring any money as he intended to clear the gold without declaring to Customs and without paying the Customs duty. The Applicant, in his statement dated 07.06.2017, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that he was working as a courier; that he had brought the 02 round shaped gold items of 24 carat purity concealed in the wheels of the stroller to avoid detection by customs and to evade customs duty; and that he brought the said gold from

Malaysia in India for monetary benefits. The matter was adjudicated, vide the aforementioned Order-in-Original dated 14.02.2018, and the gold items were absolutely confiscated. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed, mainly, on the grounds that gold is not a prohibited item; that the Applicant orally declared the gold items after being asked about it; that there was no ingenious concealment; that he did not pass through or cross the Green Channel; that he retracted his statement vide representation/retraction dated 08.02.2018 which was not considered; and that the impugned order be set aside, the gold items be permitted for re-export or release and that the penalty be reduced.

4. Personal hearing in the matter was fixed on 03.05.2023, in virtual mode. Sh. Ramakrishnan, AC, appeared for the department. No one appeared for Applicant's side nor any request for adjournment was received. The hearing was again fixed for 12.05.2023. However, Smt. Kamalamalar Palanikumar, Advocate of the Applicant, vide email dated 11.05.2023, 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 the Applicant was intercepted while crossing Customs Green Channel without making any declaration in respect of gold carried by him. He declined the possession of gold even when inquired orally. In his statement also, the Applicant had admitted the recovery of 02 nos of round shaped gold items and that he intended to clear these goods without payment of Customs duty. Further, the gold items were concealed inside the wheels of the stroller carried by him. The nature of concealment makes it evident that the Applicant had attempted to smuggle gold in a well thought out and pre-meditated manner. Hence, the contentions of the Applicant that he orally declared the gold items after being asked about it; that there was no ingenious concealment; and 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. The manner of concealment, i.e., gold items concealed inside the wheels of his stroller bag, makes the intention to smuggle 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 gold items were liable to confiscation under Section 111 *ibid* and the penalty was imposable on the Applicant.

7.1 It is observed that import of gold and articles thereof, in baggage, is allowed subject to fulfillment of certain conditions. In the present case, these conditions have not been 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 has denied the release of seized gold items 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, after detailed consideration, ordered for absolute confiscation of the gold items, for relevant and reasonable considerations recorded in paras 27 to 32 of his Order. Therefore, keeping in view the judicial pronouncements above, 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 no written declaration in respect of the subject goods and made a false declaration when asked to do so orally. 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 question of allowing re-export also does not arise.

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

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

12. The revision application is rejected for the reasons aforesaid.



(Sandeep Prakash)

Additional Secretary to the Government of India

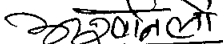
Sh. Jakir Hussain  
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Order No. 181 /23-Cus dated 12-DS-2023

Copy to:

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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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