

**SPEED POST**



F.No. 373/163/B/SZ/2020-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...04/09/24

Order No. 184 /24-Cus dated 04-09-2024 of the Government of India passed by Smt. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

Subject : Revision Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal Airport. Cus. I. No. 65/2020 dated 14.02.2020, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Ms. Ros Maszwin Binti Abdul Kadir, Malaysia

Respondent : The Principal Commissioner of Customs, Chennai-I

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**ORDER**

Revision Application No. 373/163/B/SZ/2020-RA dated 24.07.2020 has been filed by Ms. Ros Maszwin Binti Abdul Kadir, Malaysia (hereinafter referred to as the Applicant/passenger) against the Order-in-Appeal Airport. Cus. I. No. 65/2020 dated 14.02.2020, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original No. 114/2019-20-Commissionerate-I dated 30.07.2019 passed by the Joint Commissioner of Customs (Adjudication-AIR), Chennai Airport and Air Cargo Complex, Chennai-I.

2.1 Brief facts of the case are that, the Applicant, a Malaysian passport holder, upon arrival in India at the Anna International Terminal of Chennai Airport, Mennambakkam, Chennai from Malaysia on 03.01.2019, was intercepted by Customs officers at the exit point of arrival hall after crossing the green channel, on reasonable suspicion that she might be carrying gold/ contraband goods either in her baggage or on her person. A personal search of the Applicant resulted in the recovery of one long crude gold chain of 24 carat purity weighing 1.2 kgs valued at Rs. 39,70,800/- wrapped in a condom which was found concealed in the lower inner garment of the Applicant. As she had attempted to smuggle the impugned gold into India by way of concealment and mis-declaration and was not in possession of any valid document for the legal import of impugned gold into India, the aforesaid gold chain was seized under Section 110 of Customs Act, 1962 under a mahazar on 03.01.2019.

2.2 The Applicant in her voluntary statement given immediately after the seizure and subsequently, on 08.01.2019 and 09.01.2019, has stated that the gold chain was her own, bought by pawning her old jewellery and her savings along with her mother's savings; that she was submitting copy of documents as proof of the same; that she had a boutique in Malaysia; that she used to sell readymade garments and artificial jewellery, purchasing them from India, Srilanka and Dubai; that she visited India 3 times in a month depending upon the customer's demand; that during holidays, she had also acted as a tour guide for families visiting India from Malaysia; that she was earning around Rs. 10.2 lakhs per annum; that her acquaintance, Ms. Thajunudeen Nisha at Malaysian airport, had asked

her to wear a gold bracelet, clear customs and hand over the same to her outside the Chennai airport, which she refused to do then; that she learnt later that Ms. Thajunudeen Nisha had cleared a gold chain and gold bracelet thus, without payment of Customs duty; that she then decided to take her gold chain to India and intended to clear them from Chennai airport without declaration and without payment of Customs duty; that Ms. Thajunudeen Nisha had introduced one Asthakir Alfa to help her to sell gold in India; that she knew she was not eligible to bring gold into India, but did so for monetary benefit.

3. The Adjudicating Authority adjudicated the case vide Order-in-Original No. 114/2019-20-Commissionerate-I dated 30.07.2019 and absolutely confiscated the impugned gold totally weighing 1200 grams, valued Rs. 39,70,800/- under Section 111(d) and 111(l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 and imposed a penalty of Rs. 4,00,000/- under Section 112(a) of the Customs Act, 1962 on the Applicant.

4. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai who upheld the order of absolute confiscation of the impugned gold, imposed penalty on the Applicant and rejected the appeal vide above said Order-in-Appeal dated 14.02.2020. Aggrieved by the O-I-A, the Applicant filed this revision application.

5. The instant revision application has been filed mainly on the grounds that order of appellate and adjudicating authority is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to the established legal principles; that the AA did not consider that the Applicant is a bonafide tourist who came to India on a business purpose; that she had not concealed the gold ingeniously, but had kept in her inner garments for security reasons; that it was her personal jewellery, worn by her at Malaysia, which is neither restricted nor prohibited and permissible under Baggage rules and therefore Customs officers ought not to have seized it; that the impugned gold jewellery requested to allow re-export with the provision of Customs Act, 1962. The Applicant has also requested to condone the delay of 64 days while filing the appeal in view of the direction of Supreme Court regarding relaxation in filing of RA during COVID-19 period.

6. Personal hearing in the matter was fixed on 15.07.2024. Smt. P. Kamala Malar, Advocate on behalf of the Applicant appeared and reiterated the written submissions in

the matter. Shri S. Ramesh, Assistant Commissioner of Customs (Legal & Review), Chennai-I vide letter dated 15.07.2024 submitted that the Applicant did not declare the gold and opted green channel to smuggle the impugned gold it is prayed that the appeal filed by the Applicant be set aside.

7. At the outset, it has been observed that the Applicant has filed an application of for condonation of delay of 64 days in filing the instant revision application from the stipulated period. In this respect, the Applicant has filed an application for condonation of delay on the grounds that the delay occurred due to the Corona pandemic and related circumstances. The Government condones the delay in light of Hon'ble Supreme Court's order dated 10.01.2022, wherein, period from 15.03.2020 till 28.02.2022 was ordered to be excluded in computing the period of limitation.

8. The Government has examined the matter. It is observed that the impugned gold chain which was ingeniously concealed in her innerwear and not declared to Customs was recovered from the Applicant when search was conducted. She did not declare the gold despite being aware that smuggling of gold in this manner and evading the payment of duty is a violation of the law, as she was lured by the prospect of monetary benefit. She has admitted as much in his statement given to Customs under Section of 108 of the Customs Act, 1962. The sequence of events has been recorded vide mahazar dated 30.01.2019 in presence of independent witnesses which also substantiates the same. Apart from the ingenious concealment of the impugned gold and non declaration to Customs she did not produce any ownership or valid document for licit import of gold. Therefore, the contentions of the Applicant are not tenable.

9. As per rule 3(b) of the Baggage Rules read with Annexure-I, gold or silver ornaments only upto a value of Rs. 50,000/- (Rupees Fifty Thousand only) can be imported if carried on the person or in the accompanied baggage of the passenger. In this case, the imported gold was not worn, it was ingeniously concealed in a condom kept in her lower inner garment and was of a much higher value than permissible. Further, it was incumbent on the part of the Applicant to have made a proper declaration under Section 77 of the Customs Act, 1962. Hence, the impugned gold chain has been brought in violation of the provisions of the Customs Act & Baggage Rules.

10. As per Section 123 of the Act, *ibid*, 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*. The Applicant has, thus, failed to discharge the burden placed on her, 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 her in terms of Section 123, the Government concurs with the lower authorities that the impugned gold items were liable to confiscation under Section 111 *ibid* and that the Applicant was liable for penalty.

11.1 Another contention of the Applicant is that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is in the teeth of several judgements of the Hon'ble Supreme Court in which it has been held that the goods, import/export whereof is allowed subject to certain conditions, are to be treated as 'prohibited goods' in case such conditions are not fulfilled. In the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors* {1971 AIR 293}, the Apex 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. Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant in this case did not fulfil the conditions specified in this behalf. In the case of *M/s 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". Further, 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."

11.2 In the case of *Malabar Diamond Gallery P. Ltd. Vs ADG, DRI, Chennai* [2016(341) ELT65(Mad.)], the Hon'ble Madras High Court (i.e the Hon'ble jurisdictional High Court) has summarized the position on the issue, specifically in respect of gold, as under:

*"64. Dictum of the Hon'ble Supreme Court and High Courts makes it 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", in Section 2 (33) of the Customs Act, 1962-----."*

11.3 Moreover, the Hon'ble High Court of Delhi in its order dated 23.11.2023 in Writ Petition No. 8976 of 2020 in the matter of *Kiran Juneja Vs. Union of India & Ors.* has held that *"A fortiori and in terms of the plain language and intent of Section 2(33), an import which is effected in violation of a restrictive or regulatory condition would also fall within the net of "prohibited goods".* Hence, there is no doubt that the goods seized in the present case are to be treated as "prohibited goods", within the meaning of assigned to it under Section 2(33) of the Act, *ibid.*

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

12. The Government observes that the original authority had denied the release of 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 the option to release 'prohibited goods' on redemption fine is discretionary. 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."* Further, the Hon'ble Delhi High Court in its order dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that *".....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power of the Adjudging Officer"*. Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

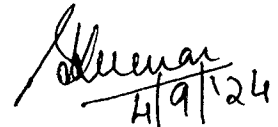
13.1 The Applicant has requested for permitting re-export for the offending goods. The Government observes that a specific provision regarding re-export of articles imported in baggage is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. On a plain reading of Section 80, it is apparent 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 vs Commissioner of Customs (P), Lucknow*{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 not made a true declaration under Section 77.

13.2 Further, the Hon'ble Delhi High Court has, in the case of *Jasvir Kaur vs. UOI* {2009 (241) ELT 621 (Del.)}, held that re-export is not permissible when article is recovered from the passenger while attempting to smuggle it. Hence, the question of allowing re-export does not arise.

14. The case laws relied upon by the Applicant, in support of her various contentions do not come to his rescue in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

15. Keeping in view facts and circumstances of the case, the penalty imposed is just and fair.

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



(Shubhagata Kumar)

Additional Secretary to the Government of India

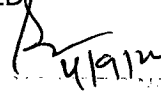
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Order No. 184/24-Cus dated 04-09-2024

Copy to:

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2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
- ✓ 6. Spare Copy
7. Notice Board

ATTESTED

  
सरकारी / Government (अधीक्षक / Superintendent)  
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