

**SPEED POST**



F.No. 373/516/B/SZ/2019-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue. 05/09/24...

Order No. 185 /24-Cus dated 05-09-2024 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 – C. Cus. I. No. 148/2019 dated 26.08.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Syed Abdul Razak, Cudapah (A.P.)

Respondent : The Principal Commissioner of Customs, Chennai-I

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**ORDER**

Revision Application No. 373/516/B/SZ/2020-RA dated 03.12.2019 has been filed by Shri Syed Abdul Razak, Cudapah (A.P.) (hereinafter referred to as the Applicant/passenger/pax) against the Order-in-Appeal Airport – C. Cus. I. No. 148/2019 dated 26.08.2019, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant except to the extent of reducing the penalty under Section 112(a) against the Order-in-Original No. 134/2018-19-Commissionerate-I dated 30.10.2018 passed by the Joint Commissioner of Customs (Adjudication-AIR), Chennai Airport and Air Cargo Complex, Chennai-I. The Applicant has also submitted a request for condonation of delay in filing the said RA.

2. Brief facts of the case are that, the Applicant, an Indian passport holder, who arrived into India on 08.04.2018 at Anna International Terminal of Chennai Airport, Meenambakkam, Chennai from Dammam via Bahrain, was intercepted by the Customs officer at the exit of the arrival hall of the Airport on the reasonable suspicion that he might be carrying gold/contraband goods either in his baggage or on his person. On search of his person, 3000 Saudi Riyals and 2500 Indian Currency were found. On search of his baggage one brown colour stroller suitcase was found to contain some toiletries, medicine and some household items only. Cutting open the above said goods one by one resulted in the recovery of 30 numbers of gold ingots wrapped with brown colour adhesive tape and 2 nos. of silver colour coated gold sheets and another 2 nos. of gold ingots, (recovered by breaking open the stroller handle). In all 32 nos. of gold ingots and 2 nos. of gold sheets totally weighing 828 grams all of 18 carat purity and valued Rs. 19,38,888/- were recovered thus. As he was not eligible to bring gold into India and since he attempted to smuggle the gold by way of concealment and non-declaration of the same to Customs and was also not in possession of any valid document for the legal import of impugned gold into India, the impugned gold was seized under Section 110 of the Customs Act, 1962 under a mahazar on 08.04.2018.

3. In his voluntary statement recorded under Section of 108 of the Customs Act, 1962 immediately after seizure, the Applicant stated inter-alia that he is a goldsmith and working in Dammam for past 2 years; that the items with concealed gold were handed

over to him by his friend 'Jamil' in Dammam with instructions to smuggle the same by way of concealment and non-declaration to Customs and hand over the same to an unknown person, who would come and collect the above said gold at his home in Cuddapah; that he attempted to smuggle the same by way of concealment and did not declare the same to Customs in Chennai airport and that he knew that it was an offence to do so and did this for monetary benefit. The Applicant vide his letter dated 08.04.2018 requested for waiver of Show Cause Notice.

4. The adjudicating authority adjudicated the matter vide aforesaid Order-in-Original No. 134/2018-19-Commissionerate-I dated 30.10.2018 vide which the seized 32 nos. of gold ingots and 2 gold sheets totally weighing 828 grams and totally valued at Rs. 19,38,888/-, recovered from the Applicant, were confiscated absolutely under Section 111(d) and 111(l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992. The material objects used to conceal the said gold i.e. 4 nos. of shaving cream, one dates packet, one dish scrubber, one powder tin, one extension cord, one medicine strip and one broken stroller suitcase and handle in dismantled condition and brown colour adhesive tape were also confiscated absolutely under Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 1,90,000/- was also imposed on the Applicant under Section 112 (a) of the Act, *ibid*.

5. Aggrieved by the said O-I-O, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai, who has rejected the appeal except to the extent of reducing the penalty from Rs. 1,90,000/- to 1,10,000/- under Section 112(a) of the Customs Act, 1962. Aggrieved by this, the Applicant filed the instant revision application.

6. The instant revision application has been filed mainly on the grounds that order of adjudicating authority is against law, weight of evidence and probabilities of the case; that the Applicant is a NRI, staying abroad for about 16 years; that he brought the gold for his daughter's marriage and that he had retracted his statement; that the Applicant is an eligible passenger to bring upto one kilogram of gold vide Notification 3/2012 dated 17.03.2012; that under Section 125 an option of redemption is mandatory in case of goods which is not prohibited; that the Applicant has prayed that the impugned order of the appellate authority be set aside and to release/re-export gold seized.

7. Personal hearings in the matter were fixed on 10.04.2024 and 12.07.2024 on virtual mode. On 12.07.2024 Shri T. Chezhiyan, Advocate appeared on behalf of the Applicant and submitted that the Applicant was an eligible passenger, though he did not declare the gold and brought it in a concealed manner. The gold was of 18 carat purity and not in commercial quantity. He is a family man, employed in Saudi Arabia for 17 years, earning 3500 Riyal per month. Thus he is not a carrier and his only infractions are concealment & non-declaration. Since gold is not prohibited, and the Applicant was eligible, an option to redeem upon RF/PP ought to have been given.

8. The instant revision application has been filed on 03.12.2019 and the Order-in-Appeal received by the Applicant on 30.08.2019 as per column (5) of CA-8 submitted by the Applicant. Hence, there is a delay of 03 days in filing the said revision application i.e. after the expiry of three months from the date of receipt, i.e. 23.03.2019. However, as per proviso to sub-section (2) of the Section 129DD of the Customs Act, 1962 provides discretion to the Government to allow an application to be presented within a further period of three months if the Government is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the normal period of three months. Since the delay is only three days and is due to illness of the Applicant, the delay is condoned.

9. The Government has examined the matter. It is observed that the impugned gold items were recovered from the Applicant when search was conducted by Customs and that the goods were not declared by the Applicant despite his being aware that smuggling of goods by not declaring them to Customs and evading the payment of duty is a violation of the law. He admitted that he acted as a carrier for a monetary consideration and that the seized gold items did not belong to him. The requirement of Section 77 of the Customs Act, 1962 to declare the goods was not met. He 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 08.04.2018 in presence of independent witnesses which also substantiates the acts of Applicant in an attempt to smuggle the confiscated goods. The Applicant was not an eligible passenger to bring gold into India as he did not satisfy the conditions as laid down in Customs Notification 50/2017-Cus dated 13.06.2017 under Sl. No.356 on condition 41 as he had not declared the gold even though

opportunities were there to declare. The adjudicating authority in para (10) of the said O-I-O also pointed out in detail regarding his ineligibility to bring gold.

10. Though it has been contended that the applicant was an eligible passenger to bring gold; the Baggage Rules, 2016 clearly stipulate that gold ornaments upto a value of Rs. 50,000/- only can be imported by an eligible passenger. In the instant case, not only is the value far in excess of the permitted value but is not in the form of ornaments and cannot in any way be considered as bonafide baggage.

11. As regard contention of the Applicant that impugned gold brought for his daughter's marriage and that he retracted his statement. In this regard, the appellate authority in para (8) of the said O-I-A has pointed out that "no genuine passenger would bring the gold in such a concealed way which was thwarted by the vigilant officers". The Applicant in his voluntary statement admitted the goods concealing gold were handed over by his friend with instruction to smuggle the same. Reliance is placed on the judgement of *Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}*, wherein *Hon'ble Supreme Court held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}*, the *Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction*. In the present case, the Applicant has admitted his involvement in the case of smuggling due to lure of earning easy money. The government agrees with Commissioner (Appeals) observation in para 10 of the O-I-A that a voluntary statement is admissible evidence and the seizure of gold and attempt to bring the gold in an ingeniously concealed manner establishes culpability.

12. 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 worn in person or carried on person. In this case, the imported gold was not in jewellery form, was not worn nor carried on the person and was of a much higher value than prescribed. Moreover in the OIO, it is recorded that the Applicant in this case was not an eligible passenger for exemption as per rules. Further, it was incumbent on the part of

the Applicant to have made a proper declaration under Section 77 of the Customs Act, 1962.

13. 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 item, as stipulated under Section 77 of the Act, *ibid*. No documents evidencing ownership and licit purchase have been produced. 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 concurs with the lower authorities that the impugned cut gold bar was liable to confiscation under Section 111 *ibid* and that the Applicant was liable for penalty.

14.1 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.*"

14.2 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-----."*

14.3 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.*

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

15. 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.

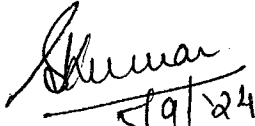
16.1 The Applicant has requested for permitting re-export for the offending goods. The Government observes that a specific provision regarding re-export of articles imported in baggage is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. On a plain reading of Section 80, it is apparent 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.

16.2 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.

17. The case laws relied upon by the Applicant, in support of his 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.

18. In view of the facts and circumstances of the case, there is no ground to interfere with order of Commissioner (Appeals). Penalty imposed by the original authority, as upheld by the Commissioner (Appeals), is neither harsh nor excessive.

19. The revision application is, accordingly, rejected.

  
5/9/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Syed Abdul Razak,  
S/o Shri Syed Basha,  
8/26-4-1, Almaspet, Cudapah,  
Andhra Pradesh

Order No. 185 /24-Cus dated 05-09-2024



Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3<sup>rd</sup> floor, New Custom House, GST Road, Meenambakkam, Chennai – 600016
2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
3. Sh. T. Chezhiyan, Advocate, No. 99, Armenian Street, III Floor, Chennai – 600 001.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

*Shailendra*  
*5/9/24*  
ATTESTED  
(शैलेन्द्र कुमार मीना)  
(Shailendra Kumar Meena)  
अनुभाग अधिकारी / Section Officer  
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नई दिल्ली / New Delhi