

SPEED POST



F. No. 373/121/B/2020-RA
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...06/09/24

Order No. 189 /24-Cus dated 06-09- 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 Application, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. TCP-CUS-000-APP-020-20 dated 20.04.2020, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. Subramaniam Vyapuri, Sri Lanka

Respondent : The Commissioner of Customs (P), Tiruchirappalli

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ORDER

A Revision Application, bearing No. 373/121/B/2020-RA dated 26.06.2020, has been filed by Sh. Subramaniam Vyapuri, Sri Lanka (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-020-20 dated 20.04.2020, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, whereby the Commissioner (Appeals) has upheld the Order-in-Original No. CBE-CUS-ADJ/02/2019-20(AC)-DENOVO dated 30.07.2019, passed by the Assistant Commissioner of Customs, Coimbatore Airport. Vide the aforementioned Order-in-Original, one gold chain and four gold rings all of 24 carat purity, 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. 75,000/- was also imposed on the Applicant, under Section 112(a) & 112 (b) of the Act, *ibid*.

Initially the matter was adjudicated by the original authority vide order dated 14.11.2017 who ordered for absolute confiscation of the gold items valued at Rs. 7,62,500/- and imposed a personal penalty of Rs. 75,000/-. Aggrieved by the order, the applicant filed appeal before the Commissioner (Appeals) who vide order dated 125/2018-TRY (CUS) dated 31.07.2018 held that the lower authority has exceeded his adjudication jurisdiction and the case should be adjudicated by officer above the rank of Assistant/Deputy Commissioner. Meanwhile, the monetary limits were changed vide Notification No. 50/2018-Customs dated 08.06.2018 and the monetary limit of adjudication for Assistant/Deputy Commissioner was increased to Rs. 10 lakhs. The matter was adjudicated *denovo* vide Order-in-Original No. CBE-CUS-ADJ/02/2019-20(AC)-DENOVO dated 30.07.2019 against which the applicant filed appeal before Commissioner (Appeals) which has been rejected.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant, a Sri Lankan national, upon his arrival at Coimbatore Airport, from Colombo, on 14.11.2017. He brought one gold chain and four gold rings all of 24 carat purity, totally weighing 250 grams, collectively valued at Rs. 7,62,500/- which were found wrapped and concealed in his body which he did not declare to Customs. It was noticed that he was a frequent visitor to India. Upon enquiry, he stated *inter-alia* that he did not opt to declare the gold in CDF or orally to the Customs; that he brought the gold for sale in India for monetary gain; and that he did not have any bill for purchase of the said gold.

The matter was adjudicated by the original authority, vide aforesaid Order-in-Original dated 30.07.2019. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The revision application has been filed mainly on the grounds that the applicant had worn the jewellery; that ownership of the gold jewellery is not disputed and there is no ingenious concealment; that he was all along under the control of the officers of customs

and was at the Red Channel; that import of gold is restricted and not prohibited; and that re-export of the gold chain may be permitted on payment of nominal fine and penalty.

4. Personal hearing in the matter was fixed, in virtual mode, on 14.06.2024. No one appeared for PH on that date. The personal hearing was again fixed on 05.07.2024. Sh. Manimaran, Superintendent appeared for the Respondent and submitted that the applicant was not an eligible passenger and was a frequent traveller; that when asked if there were any previous offences on record against the applicant, he stated that there were none and stated that the OIA is proper. No one appeared for Applicant's side. As such, it is presumed that the applicant has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed that the impugned items were recovered from the Applicant only when he was intercepted by Customs as he did not declare the same to Customs. The Applicant's contention that the jewellery was worn by him is not borne out by facts on record in the OIO and OIA. Moreover, he has himself stated that these items were brought into India for sale and monetary gain and he could not produce any proof of purchase. He has not retracted his statement. Hence, the contentions of the Applicant that he was all along in the Red Channel or that he had worn the gold jewellery 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 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 is in agreement with the lower authorities that the seized gold items were liable to confiscation under Section 111 *ibid* and, consequently, 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, the stipulated conditions have not been fulfilled by the Applicant herein. Hon'ble Supreme Court has repeatedly held 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.

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 assigned to it under Section 2(33) of the Act, *ibid.*

7.2 In view of the above, the contention of the Applicant that the impugned gold items are not 'prohibited goods', cannot be accepted.

8. The Government observes that the original authority had 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. Sinhasamy (*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.*" 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. 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. On a plain reading, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export in terms of Section 80 *ibid.* 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. In this case, the Applicant had made no written 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." Hence the option of re-export also cannot be given.

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

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

Shubhagata Kumar
6/9/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Subramaniam Vyapury
C/o S. Palanikumar, Advocate,
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Second Floor, Chennai-600001.

Order No. 189 /24-Cus dated 06-09-2024

Copy to:

1. The Commissioner of Customs & 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, 2nd Floor, Chennai-600001.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board

Shailendra Kumar Meena
6/9/24
ATTESTED
(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
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Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi