

SPEED POST



F. No. 373/17/B/2018-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 27/1/25

Order No. 27 /23-Cus dated 27-01 - 2023 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application, filed under Section 129 DD of the Customs Act 1962, against the Order-in-Appeal AIRPORT. C.Cus. No. 111/2017 dated 15.06.2017, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Ms. Vani Gunduru, Chennai

Respondent : Pr. Commissioner of Customs, Airport, Chennai.

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ORDER

A Revision Application, bearing No. 373/17/B/2018-RA dated 27.11.2017, has been filed by Ms. Vani Gunduru, Chennai (hereinafter referred to as the Applicant), against the Order-in-Appeal AIRPORT. C.Cus. No. 111/2017 dated 15.06.2017, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has upheld the Order-in-Original of the Joint Commissioner of Customs, Chennai Airport, bearing no. 202/2016-17-AIRPORT dated 04.01.2017, except to extent of setting aside the penalty imposed by the original authority under Section 114AA of the Customs Act, 1962. Vide the aforementioned Order-in-Original, 01 gold bar and 06 gold bits brought by the Applicant, collectively weighing 1581 grams and valued at Rs. 46,43,397/-, had been absolutely confiscated under Sections 111(d) & 111(l) of the Customs Act, 1962. Besides, penalties of Rs. 4,50,000/- & Rs. 1,00,000/- were also imposed on the Applicant, under Sections 112(a) and 114AA, respectively, of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant who had arrived at Chennai Airport, from Kuwait, on 16.04.2016, while she was going out through the exit of the Customs Arrival Hall and had not declared anything to Customs. On enquiry by the Customs Officers as to whether she was in possession of gold/contraband, she replied in negative. Upon the search of her person two bundles wrapped with black colour adhesive tapes kept concealed inside her brazier and one bundle wrapped with black colour cloth kept concealed inside the panty worn by her were recovered. Upon cutting open the said three bundles the gold items as mentioned above were found. Thereafter she was questioned whether she had any valid permit for legal import of the recovered gold or any foreign/Indian currency to pay duty for the said gold to which she replied in negative. The Applicant, in her statement dated 16.04.2016, recorded under Section 108 of the Customs Act, 1962, *inter-alia*, stated that she worked as a House Maid in Kuwait and was earning 70 Kuwait Dinars per month; that she attempted to pass through the exit of the customs arrival hall of the Chennai International Airport and had not declared anything to Customs; that the gold seized from her was given to her by an unknown person at Kuwait; that his whereabouts and other details were not known to her; that he had sent her photo through on Whatsapp to the receiver of the said gold in

Chennai; that he made her an offer that if she smuggled 1581 grams of gold into India, without declaring to Customs and by evading payment of Customs duty, she would receive Rs. 30,000/-; that he instructed her to hand over the said gold to a person who will come and show her photo which was sent through Whatsapp and collect the gold from her outside Chennai Airport; that she was in need of money, she agreed to the offer made by him; that she kept the three bundles containing the said gold concealed inside her brazier and panty worn by her in Kuwait Airport before checking in for her flight to Chennai; that she didn't know the receiver's identity, as no detail was told to her; that she knew that bringing gold without valid documents, not declaring the same to Customs and by way of concealment was an offence; that the above said gold did not belong to her and she would not claim for the same; that she did not have foreign currency for payment of duty for the gold, as she wanted to smuggle the same into India, without declaring to customs and without payment of duty; and that she committed the offence for monetary benefit of Rs. 30,000/-.

3. The revision application has been filed, mainly, on the grounds that the order of the lower authority is contrary to law, weight of evidence and violates the principles of natural justice; that the lower authority failed to see that the Applicant proceeded towards the Red Channel; that the Applicant was not allowed to declare the goods under Section 77 of the Customs Act, 1962; that the Applicant did not cross the customs barrier and was intercepted at metal scanner itself; that under the circumstances the import itself was not completed; that there was no concealment as it is the practice of Indian Ladies to keep valuables inside the blouse for safety; that the Applicant was in possession of foreign currency; that the Applicant is an eligible passenger; that the import of gold is not prohibited; and that lower authority ought to have allowed to redeem the goods for re-export.

4. Personal hearing was fixed on 26.12.2022, 09.01.2023 and 25.01.2023. In the hearing held on 25.01.2023, in virtual mode, Sh. A. Ganesh, Advocate appeared for the Applicant and requested that Written Submissions and compilation filed by email on 24.01.2023 may be taken on record. He submitted that keeping in view the contentions/averments made in the RA and the Written Submissions dated 24.01.2023, the

gold may be allowed to be redeemed on appropriate fine, penalty and duty. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the Applicant department has nothing to add in the matter.

5. The instant revision application has been filed with a delay of 65 days, which is attributed to the Applicant being ill at the relevant time. Delay is condoned.

6. The Government has carefully examined the matter. It is observed that the Applicant did not declare the gold brought by her, as required under Section 77 of Customs Act, 1962, to the Customs Authorities at the airport. The Applicant has admitted the recovery of gold from her and the fact of non-declaration in her statement tendered under Section 108 of Customs Act, 1962 and has revealed that she intended to clear the gold by way of concealment for monetary benefit of Rs. 30,000/-. Further, the Applicant was intercepted while she was going out through the exit of the Customs Arrival Hall. Upon being asked, she had orally also stated that she was carrying no gold or gold jewellery. Therefore, it is incorrect of the Applicant to contend that she proceeded towards the Red Channel, or that she was intercepted at metal scanner itself or that she was not allowed to declare the goods under Section 77 of the Customs Act, 1962 or that she did not cross the customs barrier. Further, it is disingenuously contended that it is the practice of Indian Ladies to keep valuables inside the blouse for safety and at the same time conspicuously omitting the fact that the gold was not just found under her brazier but also from inside her panty. The Mahazar proceedings substantiate that even after repeated questioning whether she was carrying any gold or contraband with her, she replied in negative and that she was not carrying any foreign currency. It is also on record that the Applicant herein was a person of poor means who was working as a house maid in Kuwait at a remuneration of only 70 Kuwaiti Dinars per month (about Rs. 15,000/- at the relevant time). In such a case, it is inconceivable that she could have owned gold bullion worth more than Rs. 46 lakhs. Therefore, the admission made in her statement that she was acting as a carrier for remuneration is to be believed. In these facts and circumstances, it is apparent that the Applicant herein was smuggling gold as a carrier when she was intercepted.

7.1 The Applicant has further contended that the gold is not a 'prohibited item'. The authorities below have, however, relying upon the judgments of Hon'ble Supreme Court in the cases of Sheikh Mohd. Omer {1983 (13) ELT 1439 (SC)} and Om Prakash Bhatia {2003 (155) ELT 423 (SC)} and that of the Hon'ble Madras High Court in the case of Swaminathan Murugesan {2009 (247) ELT 21(Mad.)} held that the subject goods are 'prohibited goods'.

7.2 It is observed that the gold is not allowed to be imported freely in baggage and it is permitted to be imported only subject to fulfillment of certain conditions. In the present case, it is contended that the Applicant was an eligible passenger. However, no evidence has been produced to substantiate this claim. Further, in terms of notification no. 12/2012-Cus dated 17.03.2012, the eligible passenger is allowed to import gold upto 01 Kg, at concessional rate of duty, if she had made a declaration in this regard and subject to payment of applicable duty in foreign currency. In the present case, neither a declaration was made nor the Applicant was carrying any foreign currency to pay duty. The Applicant has also cited Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993 to contend that gold is not a prohibited item. However, this contention of the Applicant is misconceived and the original authority has correctly dealt with the matter in paras 15 & 25 of the OIO. Therefore, it is evident that the Applicant did not comply with the conditions subject to which she could have imported gold in her baggage. As correctly pointed out by the authorities below, the Hon'ble Supreme Court has held that if the conditions prescribed for import or export of any goods are not complied with, such goods would be considered to be prohibited goods. It is further observed that 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 restriction.*"

7.3 In the case of Malabar Diamond Gallery P. Ltd. vs ADG, DRI, Chennai [2016(341) ELT 65 (Mad.)], a Division Bench of the Hon'ble Madras High Court (i.e. the jurisdictional

High Court) has summarized the position on the issue, specifically in respect of gold, as under:

"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 condition 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----."

The judgment in Malabar Diamond Gallery (supra) has been followed by another Division Bench of the Hon'ble Madras High Court in the case of P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}.

7.4 A single bench order of Hon'ble Madras High Court, in the case of T. Elavarasan vs. Commissioner of Customs, Chennai {2011 (266) ELT 167 (Mad.)}, has been relied upon by the Applicant herein to contend to the contrary. However, the Government observes that, in the case of P. Sinnasamy (supra), the Hon'ble Division Bench referred to the judgment of Hon'ble Single Judge in T. Elavarasan (supra) as well as subsequent Division Bench orders in the same matter but departed from the same by recording *"With due respect, in the decision of the Hon'ble Division Bench, the issue, as to whether, prohibited goods and other miscellaneous goods, attempted to be smuggled, can be released or not, has not been argued in the light of Section 2(33) of the Customs Act, 1962 and decided"*.

7.5 As such, the Government holds that the seized gold is 'prohibited goods', in terms of Section 2(33) of the Act, *ibid*.

8. The original authority has denied the release of seized goods on redemption fine under Section 125 of the Customs Act, 1962 which has been upheld in appeal. In terms of Section 125, the option to release 'prohibited goods', on redemption fine, is discretionary, as held by 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.)]. 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. Sinnasammy (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 reasons'*". Hon'ble Delhi High Court has, in the case of Raju Sharma Vs. UOI {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 motives.*" In holding so, the Hon'ble High Court has relied upon the judgment of Apex Court in the case of Mangalam Organics Ltd. {2017 (349) ELT 369 (SC)}. Thus, the Commissioner (Appeals) could have interfered with the discretion exercised by the original authority only if it would have been tainted by any of vices highlighted by the Hon'ble Courts. In the present case, the original authority has for the relevant and reasonable considerations recorded in para 26 of the OIO, ordered absolute confiscation. Hence, the Commissioner (Appeals) has correctly refused to interfere with discretion exercised by the original authority.

9.1 Other contention of the Applicant is that re-export of gold ought to have been allowed.

9.2 The Government observes that a specific provision regarding re-export of baggage articles is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. The said Section 80 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 authorised by him and leaving India or as cargo consigned in his name"

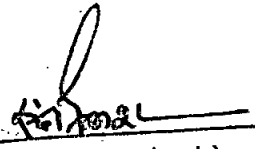
9.3 On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of

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. Hence, the question of allowing re-export does not arise.

10. The case laws relied upon by the Applicant herein in support of various contentions advanced by her are not applicable in view of the facts of the present case and the dictum of Hon'ble Supreme Court & Hon'ble High Courts, as above.

11. In the facts and circumstances of the case, the penalty imposed is neither excessive nor harsh.

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


(Sandeep Prakash)

Additional Secretary to the Government of India

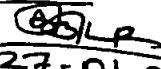
Ms. Vani Gunduru
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'F' Block, 179 Anna Nagar,
Chennai-600102

Order No. 27/123-Cus dated 27.01.2023

Copy to:

1. The Commissioner of Customs (Appeals-I), 60, Rajaji Salai, Custom House, Chennai-600001
2. The Pr. Commissioner of Customs, Anna International Airport, Meenambakkam, Chennai-600027.
3. Sh. A. Ganesh, Advocate, F-Block 179, IV Street, Annanagar, Chennai-600102.
4. PS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED


27-01-2023
(लक्ष्मी राघवन)
(Lakshmi Raghavan)
अध्यापक अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi