

**SPEED POST**



F. No. 373/299/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.. 26/9/22

Order No. 298/22-Cus dated 26-09-2022 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 Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. 201/2018-TRY(CUS) dated 31.10.2018, passed by the Commissioner of Customs (Appeals), Tiruchirappalli.

Applicant : Smt. Syed Rabiya, Thoothukudi.

Respondent : Commissioner of Customs (Preventive), Trichy.

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**ORDER**

Revision Application No. 373/299/B/SZ/2018-RA dated 12.11.2018 has been filed by Smt. Syed Rabia, Thoothukudi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 201/2018-TRY(CUS) dated 31.10.2018, passed by the Commissioner of Customs (Appeals), Tiruchirappalli. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original passed by the Assistant Commissioner of Customs (Airport), Madurai, bearing no. 81/2018-Batch-A dated 16.06.2018, wherein 02 crude gold chains and 02 crude gold kadas, totally weighing 182.5 gms, valued at Rs. 5,64,837/-, recovered from Applicant, were confiscated absolutely under Section 111(d), 111(e), 111(l), 111(m) and 111(o) of the Customs Act, 1962. Penalty of Rs. 20,000/- was also imposed on the Applicant under Section 112 (a) of the Act, ibid.

2. Brief facts of the case are that, the Applicant arrived, on 16.06.2018, at Madurai Airport, from Bangkok. She was intercepted by the Customs officers and 2 Nos of crude gold kadas weighing 91.3 gms and 2 Nos of crude gold chains (not linked) weighing 91.2 gms, collectively weighing 182.5 gms, and totally valued at Rs. 5,64,837/-, were recovered from her. She did not produce any purchase bills. Thereafter, the aforesaid Order-in-Original bearing no. 81/2018-Batch-A dated 16.06.2018 was passed by the Assistant Commissioner of Customs (Airport), Madurai. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals), Tiruchirappalli, which has been rejected.

3. The instant revision application has been filed, mainly, on the grounds that there is no specific allegation that she was intercepted while passing through green channel or crossed the green channel or exit; that as the Applicant was found wearing the gold jewellery & the same is her personal belongings and hence question of declaration does not arise; that she orally declared that she was wearing gold chains and kadas; that the baggage rules will apply only if the goods are found in the baggage since the Applicant was wearing the gold jewellery, hence question of attracting or violation of baggage rules does not arise; that case of Vigneswaran Sethuraman is squarely applicable in this case, wherein it is categorically stated that the wearing of gold jewellery either 22 or 24 is not an offence under the baggage rules and it is also held that the same is personal belonging and hence the baggage rules are not applicable; that the import of gold is not prohibited; and that, therefore, that the Order-in-Appeal may be set aside and Applicant may be permitted to re-export the gold jewellery and the penalty may be set aside/ reduced.

4. In the personal hearing held on 23.09.2022, in virtual mode, Sh. Ramakrishnan S., Superintendent, appeared for the department and supported the order of Commissioner (Appeals). The Applicant has requested for waiver of hearing, vide letter dated 09.11.2021.

5.1 The Government has carefully examined the matter.

5.2 The contentions of the Applicant that she had not crossed the Green Channel and declared the gold articles in her possession to the Customs

officer etc., are not acceptable as the same had not been contested before the Customs authorities when the charges were explained to her 'orally'. Further, she waived the show cause notice and availed the opportunity of personal hearing, at which stage also contentions to this effect were not made. Thus, it is not open to the Applicant to dispute the facts at this stage. Further, though, the Applicant claimed that she was the owner of the offending goods but she failed to produce any document, evidence etc. in support of her claim. Even at this stage, no evidence has been produced that the Applicant was the legitimate owner of the goods. As such, there is no merit in the subject contentions of the Applicant.

5.3.1 Another contention of the Applicant is that no declaration was required to be made under Section 77 of the Act *ibid*, since gold ornaments worn on person cannot be termed as 'baggage'. The judgment of Hon'ble Kerala High Court in the case of Vigneswaran Sethuraman vs. UOI {2014 (308) ELT 394 (Ker.)} has been relied upon.

5.3.2 At the outset, it is to be observed that a revision is maintainable before the Government, under Section 129DD of the Act, only if the case relates to any of the matters listed in first proviso to Section 129A. These matters are – (a) baggage, (b) short landing, and (c) drawback. Since the present case neither relates to 'short landing' nor to 'drawback', the present revision application is evidently filed since the matter relates to 'baggage'. Therefore, by filing the present RA as the matter relates to 'baggage', while simultaneously contending that the goods are not 'baggage', the Applicant has taken self-contradictory stands.

5.3.3 On merits, the Government is not persuaded by this contention of the Applicant, as evident from the Baggage Rules, 2016 themselves. Rule 3 & Rule 4 of the Rules ibid specify the entitlement for duty free clearance in bonafide baggage, in respect of passengers arriving from countries other than Nepal, Bhutan or Myanmar and those arriving from Nepal, Bhutan or Myanmar, respectively. These rules read as under:

***Rule 3. Passenger arriving from countries other than Nepal, Bhutan or Myanmar*** - An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, -

*(a) used personal effects and travel souvenirs; and*

*(b) articles other than those mentioned in Annexure-I, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*

*Provided that a tourist of foreign origin, not being an infant, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,*

*(a) used personal effects and travel souvenirs; and*

*(b) articles other than those mentioned in Annexure- I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*

*Provided further that where the passenger is an infant, only used personal effects shall be allowed duty free.*

*Explanation - The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.*

**Rule 4. Passenger arriving from Nepal, Bhutan or Myanmar -**  
*An Indian resident or a foreigner residing in India or a tourist, not being an infant arriving from Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,*

*(a) used personal effects and travel souvenirs; and*

*(b) articles other than those mentioned in Annexure -I up to the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger:*

*Provided that where the passenger is an infant, only used personal effects shall be allowed duty free: Provided further that where the passenger is arriving by land, only used personal effects shall be allowed duty free.*

*Explanation - The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger."*

Thus, it is clear that, as per Baggage Rules, 2016, articles "*carried on the person or in the accompanied baggage of the passenger*" both are part of 'baggage'. It is to be noted that the judgement in the case of Vigneswaran Sethuraman (supra) is with reference to the Baggage Rules, 1998 and not the Baggage Rules, 2016, which are applicable in the present case.

5.3.4 Further, several Hon'ble High Courts have upheld allegations of contravention of Section 77 when the person concerned failed to declare the gold kept by him/her on his body or in the clothes worn by him/her. In the case of *Commissioner of Customs (Preventive), Lucknow vs. Deepak Bajaj {2019 (365) ELT 695 (All.)}*, the Hon'ble Allahabad High Court has held that the person concerned was required to make a declaration under Section 77 *ibid* in respect of gold recovered from his jean, vest, coat and shoes.

Similarly, the Hon'ble Delhi High Court has, in the case of Air Customs vs. Begaim Akynova {WP (Cri.) 1974/2021}, vide judgment dated 03.01.2022, upheld the punishment imposed in a case where the passenger was found carrying gold concealed inside the body around the waist and thigh wherein the department had, inter-alia, alleged contravention of Sections 77 & 79 of the Customs Act, 1962.

5.3.5 In view of the above, the contention of the Applicant that the offending goods worn by her are not covered as "baggage" cannot be accepted. As such, it is held that the Applicant was required to make a declaration, under Section 77, in respect of the jewellery worn by her.

5.4.1 Further contention of the Applicant is that gold <sup>is</sup> not 'prohibited goods'. <sup>to</sup> The Commissioner (Appeals) has repelled this contention in view of the judgments of Hon'ble Supreme Court, in the case of Sheikh Mohd. Omer vs. Collector of Customs, Calcutta & Ors {1983(23)ELT1439(SC)}; in the case of Om Prakash Bhatia vs. Commissioner of Customs, Delhi {2003(155)ELT423(SC)}. The Government finds that, even subsequently, 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."*

5.4.2 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

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----."*

5.4.3 Thus, there is no doubt that the subject offending goods are 'prohibited goods' and the contentions to the contrary cannot be countenanced.

5.5 The Applicant has contended that she should have been allowed to re-export the goods. However, on perusal of the Order of the original authority dated 16.06.2018, it is observed that the Applicant never requested for the re-export of the detained goods at the original stage when the charges were explained to her orally. In any case, as per Section 80 of the Customs Act, 1962, making of true declaration under Section 77 is a condition precedent to the re-export being allowed. In this case, such a declaration was not made. Therefore, the re-export, even if asked for, could not have been allowed by the original authority. This position is supported by the judgment of Hon'ble Allahabad High Court in Deepak Bajaj (supra) wherein it is held that a declaration under Section 77 *"is a sine qua non for extending the benefit of Section 80 of the Act."*



5.6 The case laws relied upon by the Applicant, in support of various contentions, are not relevant/ applicable in view of the discussions above.

6. In the facts and circumstances of the case, the penalty imposed by the original authority, as upheld by the Commissioner (Appeals), is just and fair.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

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C/o S. Palanikumar (Advocate)  
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Order No. 298/22-Cus dated 26-09-2022

Copy to:

1. The Commissioner of Customs (Appeals), No. 1, Williams Road, Cantonment, Tiruchirappalli-620001
2. The Commissioner of Customs (Preventive), No.1, Williams Road, Cantonment, Tiruchirappalli-620001
3. Sh. S. Palanikumar, Kameshwaran & P. Kamalamalar, Advocates, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai-600001.
4. PA to AS(RA).
5. Guard file.
6. Spare Copy.

ATTESTED



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