

F. No. 373/47/B/2010-RA

SPEED POST



F. No. 373/47/B/2010-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... 7/11/22

Order No. 334/22-Cus dated 04-11-2022 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 Application filed, under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. Cus: 540/2010 dated 31.08.2010, passed by the Commissioner of Customs (Appeals), Chennai.

Applicants : Sh. Pitchai Karupiah, Pudukottai, Tamil Nadu.

Respondent : The Commissioner of Customs (Airport), Chennai.

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**ORDER**

The instant proceedings have been undertaken in compliance of the Order dated 29.01.2021 of Hon'ble Madras High Court in the Writ Petition No. 20860 of 2011, whereby the GOI Order No. 38/2011-Cus dated 03.03.2011 has been quashed and the matter has been remanded back to the revisionary authority with the following observations/directions:

*"3. The learned counsel for the petitioner drew my attention to the decision of this Court rendered on 09.10.2020 in the case of Larsen and Toubro Ltd. vs. The Revisionary Authority in WP No. 21906 of 2013 wherein the orders passed by the concerned officer sitting as the Revisionary Authority has been set aside and the case has been remitted back to the 1<sup>st</sup> respondent to pass afresh order as a new officer having competency to sit as a Revisionary Authority has been appointed and thereby curing the defect.*

*4. There is no representation on behalf of the 2<sup>nd</sup> respondent. The learned counsel for the 1<sup>st</sup> respondent is also unable to confirm as to whether the officer who passed the impugned order was incompetent or not. Therefore, without expressing any opinion on the merits of the case, the impugned order is set aside and the case is remitted back to the 2<sup>nd</sup> respondent to pass a fresh order after hearing the petitioner with a caveat.*

*5. If the impugned order passed by the 2<sup>nd</sup> respondent was passed by an officer having appropriate qualification and competency, the 2<sup>nd</sup>*

*respondent shall pass an order confirming the impugned order in the remand proceedings without any further deliberation.*

6. *On the other hand, if the 2<sup>nd</sup> respondent who passed the impugned order had lacked the competency, the case shall be re-heard on merits by the second respondent with a person having competence. Needless to state, before an order is passed by such officer of the 2<sup>nd</sup> respondent, the 1<sup>st</sup> respondent shall be heard in person or through his representative either physically or through video conference in view of the travel restrictions and inconveniences caused due to the prevalence of pandemic COVID 19.*

7. *Writ petition stands allowed in terms of the above observation. No costs. Consequently, connected Miscellaneous Petition is closed."*

1.2 Thus, the issue that is required to be decided before proceeding further is whether the Officer who passed the GOI Order No. 38/2011-Cus dated 03.03.2011 was competent to pass such an order. This issue has arisen as it was a Joint Secretary who passed the aforesaid Order dated 03.03.2011, as revisionary authority, and, as such, the revisionary authority was of the same rank as the Commissioner (Appeals) whose order was under challenge.

1.3 Government observes that the Hon'ble High Court has, in the aforesaid Order dated 29.01.2021, referred to the earlier Order dated 09.10.2020 in the case of Larsen and Toubro Ltd. (WP No. 21906 of 2013). In its Order in the case of Larsen and Toubro Ltd. (supra), the Hon'ble High Court has referred to the decision dated 24.01.2017 in the case of S. Moinuddin (WP No. 16682 of 2016). In the S. Moinuddin's case, the Hon'ble Madras High Court has followed the judgment of Hon'ble Punjab & Haryana High Court in the case of

NVR Forging Vs. UOI {2016 (335) ELT 675}, to hold that revisionary order could not have passed by an officer in the same rank as Commissioner (Appeals). Hon'ble Madras High Court has taken an identical view in the cases of Abdul Rahim Sahabudeen Vs. Pr. Commissioner of Customs (I), Chennai {2017(356)ELT 41 (Mad.)}, Haja Mohideen Abdul Jaleel vs. Union of India {2017 (346) ELT 321 (Mad.)} and Thamboli Shafiulla vs. Principal Commissioner of Customs (Airport), Chennai-I {2017 (348) ELT 422 (Mad.)}. Therefore, following the ratio of aforesaid decisions, the GOI Order dated 03.03.2011 was not passed by the competent authority.

2. Before proceeding further in the matter, it is to be recalled that a Revision Application, bearing No. 373/47/B/2010-RA dated 17.09.2010, was filed by Sh. Pitchai Karuppiah, Pudukottai, Tamilnadu (hereinafter referred to as the Applicant), against the Order-in-Appeal No. Cus: 540/2010 dated 31.08.2010, passed by the Commissioner of Customs (Appeals), Chennai. The Commissioner (Appeals) has modified the Order-in-Original, bearing no. 13/2010-ADC (Airport) dated 28.04.2010, passed by the Additional Commissioner of Customs (Airport), Chennai, and reduced the amount of penalty from Rs. 75,000/- to Rs. 50,000/- imposed under Section 112 of the Customs Act, 1962 on the Applicant. Aggrieved, the Applicant filed a revision application, which was disposed of, vide GOI Order No.38/2011-Cus dated 03.03.2011, permitting re-export of goods on payment of redemption fine of Rs. 2,14,935/-. The department thereafter approached the Hon'ble Madras High Court in WP No. 20860/2011, which has culminated in the aforesaid Order dated 29.01.2021.

3. Brief facts of the case are that the Applicant arrived at International Airport, Chennai, from Singapore, on 13.10.2009. He was intercepted by the Customs officers when he had already crossed the green channel without submitting any declaration under Section 77 of the Customs Act, 1962. On being asked whether he was carrying any gold/ gold jewellery either in his baggage or on his person, he replied in negative and declared the value of goods brought by him as Rs. 4,000/-. On search of checked-in baggage of the Applicant, assorted gold jewellery, totally weighing 624 gms valued at Rs. 8,59,741/-, was recovered. In his statements dated 13.10.2009 and 14.10.2009, tendered under Section 108 of Customs Act, 1962, the Applicant herein admitted the recovery of the said assorted gold jewellery from his checked-in-baggage. He further stated that the subject gold jewellery was handed over to him by one person outside the Singapore Airport with the directions to hand over the same to a person who was waiting outside the Chennai Airport; that the said person took his photograph on his cell phone and informed his friend, who was waiting out the Chennai Airport would give him Rs. 2,000/- for the work. The original authority, vide the Order-in-Original dated 28.04.2010, absolutely confiscated the seized gold jewellery and imposed the penalty of Rs. 75,000/- on the Applicant under Section 112 of Customs Act, 1962. The Commissioner (Appeals), vide the impugned OIA, upheld absolute confiscation but reduced penalty imposed to Rs. 50,000/-.

4. The instant revision application has been filed, mainly, on the grounds that the Applicant had made the true declaration before the concerned officer at airport and nothing concealed nor mis-declared; that request for re-export was not considered; that the gold

jewellery was brought for the marriage of his daughter and not for trading and that re-export or release may be allowed.

5. Personal hearing was fixed on 10.08.2021, 02.11.2021, 09.11.2021, 01.12.2021, 30.09.2022, 19.10.2022 and 04.11.2022. No one appeared for either side nor any request for adjournment has been received. Since sufficient opportunities have been granted, the matter is taken up for final disposal based on records.

6. The Government has carefully examined the matter. The Applicant has contended that the gold jewellery was not concealed and not mis-declared. It is, however, the case of the department that the Applicant had not declared the subject gold jewellery to the Customs on his arrival from Singapore. Even when specifically inquired about carriage of any dutiable goods, the Applicant replied in negative and declared the value of the goods brought by him as Rs. 4,000/-. During scanning of his checked-in baggage, the confiscated gold in the form of jewellery concealed in his black color "Encorelite" jumbo zipper bag bearing tag no. 0589 9W 269685 and navy blue 'New Sun' jumbo zipper bag bearing no. 0589 9W 269686, were recovered. It is observed that the case of the department is based on search proceedings conducted in the presence of independent witnesses. No evidence has been placed on record to dispute the search proceedings. Therefore, the contentions to the contrary are incorrect. In these facts and circumstances, the orders of the authorities below adjudging the liability to confiscation of the seized goods under Section 111 ibid and imposing penalty under Section 112 are unexceptionable.

7.1 The Applicant has contended that the authorities below did not consider re-export. The Government observes that a specific provision regarding re-export of baggage articles has been made in Section 80 of Customs Act, 1962, which reads as follows:

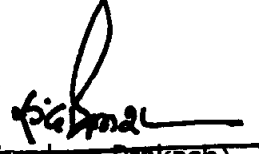
*"80. Temporary detention of baggage.—Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for 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."*

7.2 Section 80, thus, provides that the detained imported goods can be re-exported at the request of the passenger where he/she is returning from India to a foreign country. Thus, return of the passenger to the foreign country after a short visit to India as a tourist or otherwise is a crucial condition for re-export of impugned goods. Further, a pre-condition to allow re-export under Section 80 of Customs Act, 1962 is that "***a true declaration has been made under section 77***", which is not the case here. As the conditions, subject to which re-export can be allowed under Section 80 of Customs Act 1962, are not fulfilled, re-export of the seized gold items cannot be permitted.

7.3 In the case of Commissioner of Customs (Prev), Lucknow vs. Deepak Bajaj {2019(365)ELT695(All.)}, the respondent Deepak Bajaj, a holder of British passport, was intercepted while entering India through Nepal and 4320 gms of gold was recovered from

him. In the second appeal, the CESTAT allowed the gold to be re-exported. However, the Hon'ble Allahabad High Court set aside the order of CESTAT and held that re-export can be allowed under Section 80 only if a declaration has been made under Section 77. In the present case, such a declaration has not been made and, thus, the requirements for re-export are not satisfied.

7. In view of the above, the impugned OIA does not merit revision. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

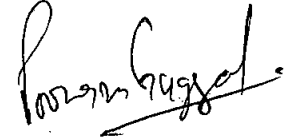
Sh. Pitchai Karuppiah,  
C/o K. Mohammed Ismail, Advocate,  
New Number 101 (Old Number 271),  
Lingi Chetty Street, Chennai – 600 001

Order No. 334/22-Cus dated 04/11-2022

Copy to:

1. The Commissioner of Customs, Chennai Airport, Air Cargo Complex, Meenambakkam, Chennai – 600 027;
2. The Commissioner of Customs (Appeals), 60, Rajaji Salai, Custom House; Chennai-600 001
3. PA to AS(RA).
4. Guard File.
5. Spare Copy

ATTESTED



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