

SPEED POST



F. No. 373/146/B/SZ/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.....07/01/2025

Order No. 02 /25-Cus dated 07/01/2025 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-030-20 dated 24.04.2020, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli.

Applicant : Smt. Kaleeswari, Avarampatti, Rajapalayam, Virudhunagar

Respondent : The Commissioner of Customs (P), Tiruchirappalli

ORDER

A Revision Application No. 373/146/B/2020-RA dated 22.07.2020, has been filed by Smt. Kaleeswari (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-030-20 dated 24.04.2020, passed by the Commissioner of Customs & Central Excise (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), Tiruchirappalli, bearing no. 221/19-AIU-TRY dated 29.05.2019 vide which two gold chains of 22 Carat purity totally weighing 201.00 grams valued at Rs. 5,99,985/- 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. 60,000/- was also imposed on the Applicant, under Section 112(a), 112(b) of the Act, *ibid*.

2. Brief facts of the case are that, the Applicant an Indian passport holder who arrived from Kuala Lumpur was intercepted by the officers of AIU, Airport, Tiruchirappalli on 11.11.2018 while she was attempting to cross the green channel. When search was conducted, two gold chains totally weighing 201.00 grams were recovered from her which were seized under Section 110(1) of the Customs Act, 1962. The Govt. approved assayer had tested and appraised the impugned gold and found it to be of 22 carat purity totally weighing 201.00 gms and valued at Rs.5,99,985/-. On the reasonable belief that the impugned goods were brought in contravention of the Customs Act, 1962, the officers seized them for taking further action. The Applicant in her statement dated 11.11.2018 recorded under Section 108 of the Customs Act, 1962 has contended that she had purchased the impugned gold with an intention to make profit by evading Customs duty; that she did not possess any valid document/license/permit for legal import of gold into India; that she was aware that bringing gold by way of concealment or attempting to smuggle into India was an offence. The matter was adjudicated vide the aforementioned Order-in Original No. 221/2019 dated 29.05.2019. 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 there was no concealment and the gold chains were worn by the applicant; that the applicant had brought the gold for her own use; that gold chain is allowed for free clearance if it is within limit; that necessary requirement for imposition of penalty under section 112(a) and (b) of

the Customs Act, 1962 is absent in this case; that the applicant is eligible to import gold and gold ornaments; that gold bullion and gold ornaments are dutiable and not prohibited under the provisions of Foreign Trade order 1993 and option for re-export of gold or gold chain under Section 125 of Customs Act 1962 should have been given ; It is prayed that the gold be allowed for release on payment of appropriate duty and fine etc. or be allowed for re-export and the penalty be set aside.

4. Personal hearings in the matter were fixed on 14.06.2024 & 08.07.2024. The authorized representative of the Applicant vide letter dated 08.07.2024 requested for postponement of personal hearing on the health grounds and for submission of documents. In the personal hearing fixed on 04.10.2024, Sh. A. Selvaraj, the authorized representative of the Applicant appeared and submitted that the applicant brought only two gold chains of 22 carat purity which were worn and not concealed. He reiterated the written submissions and sought for release of the gold on payment of dues. Sh. S. Sivakumar, Superintendent, Customs, Tiruchirappalli appeared for the respondents and submitted that no declaration was made by the Applicant; that gold was concealed and requested that OIA should be upheld.

5.1 The Government has examined the matter. It is noted that the applicant submitted a baggage declaration form without mentioning any dutiable goods therein. When she was questioned, she denied possession of gold etc. Furthermore, when asked to remove all metallic items from her person she still did not remove the gold chains which were discovered when the metal detector beeped near the neck. She is a frequent traveller and well aware of the rules. Since she in her own statement under Section 108 of Customs Act, 1962 has admitted that she is into buying goods from India and selling them in Malaysia, and brought the gold chain in concealed manner for sale in India, it cannot be held as bonafide baggage and the intent to smuggle is also evident. It on record that she did not possess any valid document/license/permit for legal import of gold into India. The relevant sequence of events has been recorded in the Mahazar which also substantiates the acts of Applicant in an attempt to smuggle the confiscated goods. She has not retracted her statement. In the present case, the Applicant has admitted to her involvement in smuggling due to the lure of earning easy money with full awareness that this is illegal and an offence. The admissions made are corroborated by other material on record, as discussed hereinabove. Thus, there is no evidence on record to establish that the Applicant was the legitimate owner of the impugned gold.

5.2 In terms of Notification No. 12/2012-Cus dated 17.03.2012, as amended, the term 'eligible passenger' is defined as a passenger of Indian origin or a passenger holding a valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the 'eligible passenger' during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits. It is noticed that the Applicant was a short visit passenger and had not stayed abroad for more than 6 months. Also, the duty is payable in convertible foreign currency and no foreign currency was found on the Applicant. As per proviso to condition 35, the Applicant was also required to make a declaration of dutiable goods in this regard, which has also not been done in this case. Hence, the contention of the Applicant that she was an eligible passenger to avail benefit of the said notification is devoid of merit.

5.3 As regards the contention of the Applicant that grounds for imposition of penalty under Sections 112 (a) and (b) are absent in this case, the Govt. observes that there is no bar in the Customs Act upon simultaneous levy of penalty under Sections 112 (a) and (b). Bringing into India goods which contravene the provisions of the Customs Act and omitting to declare the same under Sections 77 of the Customs Act, 1962 are clearly covered under *"does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act"*. Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Sections 112(b) of the Customs Act, 1962.

5.4 The Government also finds that the applicant was well aware that the goods had to be declared to the Customs and that non-declaration of dutiable goods is an offence under the Customs Act, 1962 and Rules & Regulations made thereunder. The Applicant attempted to smuggle the impugned gold by deliberately not declaring the same upon arrival, with the willful intent to evade Customs duty. Further, it is seen that the statement of the Applicant reveals that she was a carrier and has attempted to smuggle the impugned gold for monetary benefit. Therefore, the Applicant has committed an offence of the nature described in Section 112(a) and 112(b) of Customs Act, 1962 making him liable for penalty under both these provisions and that there appears to be no provision that precludes simultaneous imposition of penalty under Section of Section 112(a) and 112(b) when both these have been violated.

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*. On examination of her passport travel document viz Indian Passport, it was seen that the passenger had travelled frequently and she had not stayed abroad for more than 6 month there. In terms of Notification No.50/2017-Cus dated 30.06.2017, the applicant did not fulfill the condition to import gold jewellery. The Applicant has, thus, failed to discharge the burden placed on her, 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 her in terms of Section 123, the Government observes that the finding of the Original Authority that seized gold item was liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant is correct.

7. As per rule 3(b) of the Baggage Rules, 2016 read with Annexure-I, gold or silver ornaments only upto a value of Rs. 50,000/- (Rupees Fifty Thousand only) can be imported if carried on the person or in the accompanied baggage of the passenger. In this case, although the imported gold was in jewellery form and was carried on the person, it was of a much higher value than the prescribed limit i.e Rs.50,000/- and was not declared to customs. It is also on record 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 Respondent to have made a proper declaration under Section 77 of the Customs Act, 1962. Moreover, it is also on record that she did not have any convertible foreign currency for paying customs duty for the said gold.

8.1 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. The Hon'ble Supreme Court has repeatedly held that if conditions for import of goods are not fulfilled, they 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, the goods seized in the present case have to be treated as 'prohibited goods', within the meaning assigned to it under Section 2(33) of the Act, *ibid*.

8.2 In view of the above, the contention of the Applicant that the impugned gold item was not 'prohibited goods', cannot be accepted.

9. 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. Sinnasamy (*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."* Now in the latest judgment 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.


10. 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.

11. The case laws relied upon by the Applicant, in support of her 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.

12. In the facts and circumstances of the case, the penalty imposed by the original authority, as upheld by the Commissioner (Appeals), is neither harsh nor excessive.

13. The revision application is, accordingly, rejected.


7/1/2025

(Shubhagata Kumar)

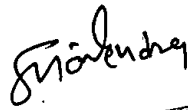
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Order No. 02/25-Cus dated 07/01/2025

Copy to:

1. The Commissioner of GST & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Sh. A. Selvaraj, Superintendent of Customs (Retd.), 68, Krishnamurthynagar, Tiruchirappalli-620021.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board


ATTESTED
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