

**SPEED POST**



F.No. 373/239/B/SZ/2020-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.....08/01/2025

Order No. 05/25-Cus dated 08/01/2025 of the Government of India passed by  
Smt. Shubhagata Kumar, 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 No. TCP-CUS-  
000-APP-063-20 dated 28.08.2020 passed by the  
Commissioner of Customs & Central Excise (Appeals),  
Tiruchirappalli.

Applicant : Smt. Kanaka, Thiruvarur

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli.

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**ORDER**

A Revision Application, bearing No. 373/239/B/SZ/2020-RA dated 26.10.2020, has been filed by Smt. Kanaka, Thiruvarur (hereinafter referred to as the Applicant/passenger), against the Order-in-Appeal No. TCP-CUS-000-APP-063-20 dated 28.08.2020, passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli who has rejected the appeal of the Applicant and upheld the Order-in-Original No. 197/2019 dated 28.05.2019 of the Assistant Commissioner of Customs International Airport, Sembattu, Tiruchirappalli.

2. Brief facts of the case are that, the Applicant, an Indian Passport holder, arrived from Singapore on 21.11.2018, at Trichy International Airport. She was intercepted by the officers of AIU, Airport, Trichy, when she was passing through the green channel in a suspicious manner. The officers enquired from the Applicant whether she was carrying any gold/contraband on her person or in her checked in luggage/ hand baggage, to which she replied in the negative. Not satisfied with her reply, the officers conducted search with the help of a lady officer which resulted in the recovery of four unfinished gold chains (two long chains and two small chains) of 24 carat purity weighing 149.500 grams valued at Rs. 4,64,497/- (@ Rs.3,107/- per gm) packed with transparent plastic film and concealed inside her innerwear. The officers on the reasonable belief that the impugned gold chain were brought in contravention to the provisions of the Customs Act, 1962 seized the same under a Mahazar for taking further action under the Customs Act, 1962.

3. After due process of law, the original authority i.e. the Assistant Commissioner of Customs, International Airport, Sembattu, Tiruchirappalli vide Order-in-Original No. 197/2019 dated 28.05.2019 ordered for absolute confiscation of the aforesaid four unfinished gold chains of 24 carat purity weighing 149.500 grams valued at Rs. 4,64,497/- under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 alongwith transparent plastic film used for concealing the impugned gold items under Section 119 of the Customs Act, 1962 and imposed penalty of Rs. 90,000/- on the Applicant under Section 112(a) & 112(b) of the Act, *ibid*.

4. Aggrieved, the Applicant filed appeal before the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli who has upheld the order of absolute confiscation of the impugned gold and penalty imposed on the Applicant and rejected the appeal vide impugned OIA dated 28.08.2020. Aggrieved by OIA, the Applicant had filed this revision application.

5. The instant revision application has been filed, mainly, on the grounds that the Applicant is a non-resident Indian working as a housemaid in Singapore and was returning after a long time to India. She had kept the gold items in her innerwear for safety purpose

only; that gold is not a prohibited item for import. The prayer is for the impugned Order-in-Appeal be set aside; that the impugned gold items be permitted for re-export/released and also set aside or reduce the personal penalty under Section 112(a) and 112(b) of the Customs Act, 1962.

6. Personal hearing in the matter was fixed on 11.11.2024. Shri A. Selvaraj, Advocate appeared on behalf of the Applicant and submitted that the Applicant, an Indian, works as a domestic help in Singapore and brought impugned gold for her daughter's wedding. Her statement was extracted and is not voluntary. The penalty is too high, being 20 % of the value of the goods. He sought either re-export or redemption against payment of dues. Shri S. Sivakumar, Superintendent, Customs, Trichy (Legal) appeared on behalf of the Respondent department and submitted that the gold was of 24 carat purity and unfinished in nature and thus not bonafide baggage; it was concealed in her innerwear and liable for confiscation and sated that O-I-A is proper and should be upheld.

7.1 The Government has examined the matter. The Applicant has admitted in her voluntary statement recorded under Section 108 of the Customs Act, 1962 that the impugned gold items did not belong to her. It is not disputed that the impugned gold was brought concealed in the applicant's innerwear and that no declaration under Section 77 of the Customs Act, 1962 was filed. Further, she was neither in possession of any valid documents for the legal import of impugned gold into India nor in possession of convertible foreign currency for payment of duty and was not an eligible passenger to import impugned gold in terms of Notification No. 50/2017-Cus dated 30.06.2017. The relevant sequence of events have been recorded in the Mahazar which substantiates the acts of Applicant in an attempt to smuggle the confiscated goods. In her own statement recorded under Section 108 of the Customs Act, 1962, she has admitted that the impugned gold did not belong to her and she smuggled the same due to lure of money. *The Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, wherein Hon'ble Supreme Court held that a confession statement made before the Customs Officer, though retracted within six days, is an admission and binding since Customs Officers are not Police Officers. In the case of K.I. Pavunny {1997 (90) ELT 241 (SC)}, the Hon'ble Supreme Court has held that the confessional statement of an accused if found voluntary, can form the sole basis for conviction.* In the present case, the Applicant has admitted his involvement in the case of smuggling due to lure of earning easy money. The admissions made are corroborated by other material on record, as discussed hereinabove. The Order-in-Appeal also does not contain anything to suggest that the Applicant was coerced into making the statement under section 108 or any evidence to establish licit ownership of the impugned goods. Therefore, there is no doubt that the statement tendered was voluntary. As such, it is evident that the impugned gold items did not belong to the Applicant as has been claimed by her subsequently appears to be an afterthought.

7.2 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 the goods are recovered. The Applicant did not declare the gold items as stipulated under Section 77 of the Act, *ibid*. Further, the Applicant was intercepted after passing through the Green Channel. 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 her, in terms of Section 123, *ibid*.

7.3 Keeping in view the facts of the case and as the Applicant has failed to discharge the onus placed on her in terms of Section 123, the Government agrees with the adjudicating as well as appellate authorities that the seized goods were liable to confiscation under Section 111 *ibid* and the penalty was imposable on the Applicant.

8.1 The Applicant has contended that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is against several judgements of the Hon'ble Supreme Court in which it has been held that the goods, import/export whereof is allowed subject to certain conditions, are to be treated as 'prohibited goods' in case such conditions are not fulfilled. In the case of *Sheikh Mohd. Omer vs Collector of Customs, Calcutta & Ors* {1971 AIR 293}, the Apex Court has held that for the purpose of Section 111(d) of the Customs Act, 1962, the term "Any prohibition" means every prohibition. In other words, all types of prohibition. Restriction is one type of prohibition. Gold is not allowed to be imported freely in baggage and it is permitted to be imported by a passenger subject to fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant herein had not fulfilled the conditions specified in this behalf. In the case of *M/s Om Prakash Bhatia Vs. Commissioner of Customs, Delhi* {2003(155) ELT423(SC)}, the Hon'ble Supreme Court has held that "if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods". Further, 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."

8.2 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 Hon'ble 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-----."

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

8.4 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

9.1 The Government observes that the original authority had denied the release of 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 the option to release 'prohibited goods' on redemption fine is discretionary. 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."* Further, 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.

9.2 Further, the Division Bench of Hon'ble Madras High Court in the decision reported in 2009(247) E.L.T. 21 (Mad) (*Commissioner of Customs Vs. Samynathan Murugesan*) which held that if the manner of Import of Gold is by ingenious concealment and patently fraudulent, then, the adjudicating authority may direct absolute confiscation of the goods instead of exercising his discretion under Section 125 of the Act. Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

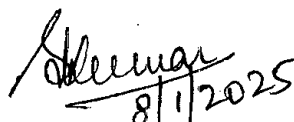
10. The Applicant has requested to be allowed to re-export the impugned gold. The Government observes that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Act, *ibid* and upon a plain reading of the same, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of *Deepak Bajaj* {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 made no 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 she should be given permission to re-export." Hence, the request for re-export cannot be allowed.

11. The case laws relied upon by the Applicant, in support of his various contentions, are not applicable in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

12. In view of the facts and circumstances of the case, there is no ground to interfere with order of Commissioner (Appeals) regarding absolute confiscation of impugned gold. However, the penalty imposed under Section 112(a) & 112(b) of the Customs Act, 1962 is reduced from Rs. 90,000/- to Rs. 60,000/- and the OIA is modified to this extent.

13. In view of the above, the revision application is disposed of on above terms.

  
8/1/2025  
(Shubhagata Kumar)

Additional Secretary to the Government of India

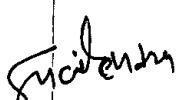
Smt. Kanaka,  
W/o Shri Kuppusamy,  
No. 6/36A, Vellalar Street,  
Moolamangalam, Mappillaikuppam,  
PO Nannilam TK, Thiruvavur Dt – 610105,  
Tamil Nadu, India

Order No. 05/25-Cus dated 08/01/2025

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirappalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. Sh. A. Selvaraj, Superintendent of Customs (Retd.), 68, Krishnamurthynagar, Tiruchirappalli- 620 021
4. PPS to AS (RA).
5. Guard file.
- ✓ 6. Spare Copy
7. Notice Board

ATTESTED

  
(Shailendra Kumar Moena)  
अनुपाय अधिकारी (आपाधिकारी)  
विशेष मंत्रालय (विशेष मंत्रालय)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi