

**SPEED POST**



F.No. 373/447/B/SZ/2019-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. 09/07/24

Order No. 130/24-Cus dated 09-07-2024 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 Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal C.Cus. I. No. 196/2019 dated 10.09.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri K. Mohamed Salik, Chennai

Respondent : The Principal Commissioner of Customs, Chennai-I

---

**ORDER**

Revision Application No. 373/447/B/SZ/2019-RA dated 04.11.2019 has been filed by Shri K. Mohamed Salik, Chennai (hereinafter referred to as the Applicant) against the Order-in-Appeal C.Cus. I. No. 196/2019 dated 10.09.2019, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original passed by the Assistant Commissioner of Customs (Airport), Anna International Airport, Chennai, bearing OS No. 227/2019-Commissionerate-I dated 20.03.2019.

2. Brief facts of the case are that, after a six day stay abroad, the Applicant, an Indian Passport holder, arrived at Anna International Airport, Chennai on 25.02.2019 from Bangkok. He was intercepted by the Customs officers and upon examination, the above said impugned gold and other electronic items having total value of Rs. 8,49,421/- were recovered from the Applicant. He attempted to clear the above items without declaring the same to Customs officials by way of concealment and he was also not an eligible passenger to bring gold and other items into India, nor was he in the possession of valid purchase documents for the legal import of impugned goods into India. It was noticed that the Applicant is a frequent traveller and had brought goods in commercial quantity. The Applicant requested for adjudication of the case without issue of Show Cause Notice. The impugned goods were seized by the Customs officers and the matter was adjudicated by the adjudicating authority vide the aforesaid Order-in-Original bearing OS No. 227/2019-Commissionerate-I dated 20.03.2019, vide which one gold biscuit weighing 37 grams valued at Rs. 1,12,421/-, 1700 nos. of Memory cards valued at Rs. 1,70,000/-, 10 batteries for I-phone valued at Rs. 7,000/-, Tamaron Lenses 200MMF28 valued at Rs. 70,000/-, 08 nos. of I-phone XR (without accessories) valued at Rs. 4,00,000/-, 03 nos. of I Watch series 4 (40MM) valued at Rs. 90,000/- altogether valued at Rs. 8,49,421/-, recovered from Applicant, were confiscated under Section 111(d) and 111(l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 with an option for redemption payment of Redemption fine of Rs. 2,70,000/-, besides Personal Penalty of Rs. 70,000/- was also imposed on the Applicant under Section 112 (a) of the Act, *ibid*.

Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai, which has been rejected.

3. The instant revision application has been filed mainly on the grounds that order of appellate authority is unjust, unfair, unfounded and as such the same is totally devoid of any merits and is therefore not legally sustainable; the penalty imposed has been harsh and not proportionate to the offence committed by the Applicant; that the Applicant is an Indian Passport holder. He went to Bangkok for employment, stayed there and on his return brought the items which are not prohibited nor restricted for imports; that except gold all the other items were freely importable and the Applicant had no intention of concealment or to clear the goods by non-declaration. It is prayed to set aside the impugned order of the lower appellate authority in confirming the redemption fine and penalty imposed by the Lower Adjudicating Authority, or pass any other order as deem fit.

4. Personal hearing in the matter were fixed on 22.03.2024, 08.04.2024 and 22.04.2024. On 22.03.2024, Shri S. Ramesh, Assistant Commissioner appeared on behalf of the Respondent department and submitted that the Applicant is a frequent traveller and brought gold (37 gms.) along with many other goods in commercial quantity which cannot be termed as bonafide baggage. He also did not have any valid documents for these goods. He further submitted that the original authority had given him enough benefit already and this has been upheld in the O-I-A also. No further relief is merited in the case. He reiterated the case of Mansi Impex and prayed for the O-I-A to be upheld. On 22.04.2024, Shri Kulasekharan, Advocate appeared on behalf of the Applicant and submitted that the Applicant is a poor trader and is facing financial hardship. He stated that the impugned gold was only 37 gms and also that the quantum of fine and penalty is very high. He prayed for a sympathetic view in the matter and requested for reduction in penalty.

5. The Government has carefully examined the matter. It is observed that the Applicant was attempting to clear the above said goods without declaring the same to Customs; that he was not able to produce any valid documents for the legal import of gold into India;

the goods brought were in commercial quantity; that the Applicant is a frequent traveller. The appellate authority also mentioned that the adjudicating authority on his discretion has given an option to redeem the gold of 37 grams and other electronic goods and also no appeal was filed by the department against the release of gold. The appellate authority has referred to the case of *M/s Mansi Impex, 2011(270) ELT 631 (SC)* wherein the Hon'ble Supreme Court has held "*On appeal being filed before the Tribunal at the instance of the respondents, the tribunal has interfered with the aforesaid orders passed by the Commissioner only on the ground that in other cases, redemption fine has been reduced to 20% and the penalty has been reduced to 5% and following that order passed by the Tribunal in some other cases, an order was passed by the Tribunal in the present case also for reducing both the redemption fine as also the penalty to 20% and 5% respectively. We find that the said order passed by the Tribunal is arbitrary and whimsical, for no reasons have been recorded specifically as to why in these particular cases it should be reduced to 20% and 5% and determination of quantum to be paid as redemption fine and penalty should be dependent on the facts and circumstances of each case. In the case of Commissioner of Customs (Import) v. Stoneman Marble Industries, reported in 2011 (264) E.L.T. 3 (S.C.), it was held by this court that a standard formula cannot be laid down for imposition of redemption fine and penalty."* Further, it has been on record that the goods have already been redeemed vide baggage receipt SBI/C/B/3771 dated 28.03.2019.

6.1 The Applicant has contended that the import of gold is not 'prohibited'. However, the Government observes that this contention flies in the teeth of 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 in this case did not fulfil 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."

6.2 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----."*

6.3 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.*

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

7. As per Section 123 of the Act, *ibid.*, 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.* No documents evidencing ownership and licit purchase have been

produced. The Applicant has, thus, failed to discharge the burden placed on him, 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 him in terms of Section 123, the Government concurs with the lower authorities that the seized gold item was liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant.

8. As regard release of goods on payment of redemption fine, the original authority has already exercised their discretion by allowing the release of impugned goods on redemption fine under Section 125 of the Customs Act, 1962. The government finds no reason to interfere with the order of Commissioner (Appeals) in this case.

9. In view of 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.

10. The revision application is, accordingly, rejected.

*Shubhagata Kumar*  
9/7/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri K. Mohamed Salik,  
Old No. 31, New No. 85,  
Savarimuthu Street, Mannady,  
Chennai -600001

Order No. 130 /24-Cus dated 09-07-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3<sup>rd</sup> floor, New Custom House, GST Road, Meenambakkam, Chennai – 600016
2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
3. M/s. B.K. Associates, #117/55, Egmore High Road, Egmore, Chennai - 600008.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED

*Shailendra Kumar Meena*  
9/7/24  
(Shailendra Kumar Meena)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi