

**SPEED POST**



F. No. 373/61/B/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. 12/07/24.

Order No. 134/24-Cus dated 12-07-2024 of the Government of India passed by Ms. 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. 105/2019-TRY(CUS) dated 30.12.2019, passed by the Commissioner of GST & C.Ex (Appeals), Tiruchirappalli.

Applicant : Smt. Majthunisha Banu Binti Khali Kasman, Kuala Lumpur

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli

.....

**ORDER**

A Revision Application, bearing No. 373/61/B/2020-RA dated 24.02.2020, has been filed by Smt. Majthunisha Banu Binti Khali Kasman, Kuala Lumpur (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 105/2019-TRY(CUS) dated 30.12.2019, passed by the Commissioner of GST & C.Ex (Appeals), Tiruchirappalli. The Commissioner (Appeals) vide the impugned OIA, upheld the O-I-O No. TCP-CUS-PRV-JTC-006-19 dated 28.01.2019 passed by the Joint Commissioner of Customs (Preventive), Tiruchirappalli. Vide the aforesaid OIO four unfinished gold bangles (hand), one unfinished and unjoined gold rings (neck), one unfinished and unjoined gold ring forming a chain attached with solid cylindrical shaped gold piece(waist) and two unfinished and unjoined gold rings forming chains with hook (ankle) all having 24 carat purity, totally weighing 1299.100 grams and collectively valued at Rs. 40,09,023/- recovered from the applicant were absolutely confiscated under section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. Besides a penalty of Rs. 10,00,000/- was also imposed upon the applicant under Section 112(a) & (b) of the Customs Act, 1962 out of which Rs. 2,00,000/- paid by the applicant as cash security has been appropriated.

2. Brief facts of the case are that the Applicant, a Malaysian citizen was intercepted by the Customs Officers upon her arrival at Tiruchirappalli airport from Kuala Lumpur on 05.06.2018 while she was attempting to exit through the green channel. Upon enquiry it was found that she had not submitted the Indian Customs Declaration Form. Upon being asked whether she had any other items to be declared to the baggage officers she replied in the negative. Upon further enquiry as to whether she had brought any valuables or gold in any form with her, either in her person or in her baggage, she replied in the affirmative. Thereafter, upon the search of her person the aforementioned items were found on her body. The Government approved assayer appraised the aforementioned gold items and certified them to be of 24 carat purity, totally weighing 1299.100 grams and collectively valued at Rs. 40,09,023/-. The Applicant in her statement recorded under Section 108 of the act *ibid* stated *inter alia* that she runs a restaurant at Langkawi; that she is a frequent traveller to India; that she very well knew the Customs rules & regulations; that that she intended to clear the above said gold items without payment of Customs duty by concealing the same wearing in her hand, neck, ankle and waist covered with her Kurta

and Leggings; that she did not possess any valid documents to import gold into India. The matter was adjudicated vide the aforesaid OIO dated 28.01.2019. Aggrieved, the applicant filed an appeal before the Commissioner (Appeals) which has been rejected.

3. The revision application has been filed mainly on the grounds that there was no ingenious concealment; that no import of gold jewellery was made as it was worn on her person; that gold jewellery belonged to the applicant and was in a form which can be for normal personal use, the same cannot be treated as restricted for import as bonafide baggage. It is further prayed that the confiscated gold jewellery be allowed for re-export without payment of fine and penalty or with payment of nominal penalty.

4. Personal hearing in the matter was fixed for 10.05.2024, but no one appeared for either side. In the personal hearing held on 20.05.2024, Sh. Satish Sundar, advocate, appeared on behalf of the applicant and submitted that the applicant, a Malaysian National, came to India for a wedding and was found wearing gold jewellery of more than 1299 grams and of 24 carat purity which was seized as it was not declared to Customs. He submitted that the applicant ought to have been given the option of re-export of the jewellery. He quoted the judgements in the cases of Vighneswaran Sethuraman of the Kerala High Court, earlier orders of the Revisionary Authority, as well as Chandrasekharan Vijaysundaram of 2022 in support of his case. He sought that the applicant be given an option to re-export the gold. He also sought to make a written submission on the matter, which has been taken on record. The written submission reiterates the submissions made during P.H.

5.1 The Government has examined the matter carefully. The Government observes that the Applicant has contended that she did not conceal the impugned gold items and was simply wearing them on her person. However, from the material placed on record, it emerges that even though the impugned gold items were worn by the Applicant on her person, the same was not declared by her as required under Section 77 of the act *ibid*.

The CBEC vide circular F. no. 495/5/92-Cus.VI dated 10.05.1993 while discussing the option to redeem confiscated goods illustrated concealment. Relevant part of the circular referred upon is as below:

*"The option of redemption fine should be given where the adjudication authority is satisfied that there was no concealment of gold in question (for example a piece of gold kept in a medicine bottle will be treated as concealment while a bangle/necklace worn by a passenger may not be considered a concealment, if it was easily visible)".*

The Government observes that the language of the circular is plain and unambiguous as it says that any ornament worn on the person of the passenger in a manner which could be seen by others may not be treated as concealment. However, this was not so in the case of the Applicant. The gold items recovered may have been worn by the Applicant, but they were worn under her clothes in a manner that was not easily visible to others as recorded in the OIO. Further, if there was no intention to evade Customs duty, the gold items should have, at least at that point been declared by her to Customs. That was not the case. Therefore, it is difficult to accept that there was no concealment and no intent to evade Customs duty.

5.2. It has also been contested by the Applicant that no import of gold jewellery was made as it was worn on her person. On this contention, the Government observes that once the impugned gold items were recovered from the Applicant which were not declared by her, she in her statement tendered under Section 108 of the act *ibid*, admitted that she was carrying the recovered gold items in a concealed manner to avoid payment of customs duty. Had she not been intercepted by Customs, the Applicant herein, would have left the Customs area and exited with the smuggled gold items clandestinely.

In this regard, 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 of the Act *ibid* in respect of gold recovered from his jeans, 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, a foreign national, was

found carrying gold concealed on the body around the waist and thigh. The department had, in this case, alleged inter-alia the contravention of Sections 77 & 79 of the Customs Act, 1962. Thus, the Government does not agree with the contention of the Applicant that she did not import the impugned gold items simply because she wore them.

6. Further, the case law Vigneswaran Sethuraman Vs Union of India {2014(308) E.L.T 394 (ker.)} cited by the advocate of the applicant is not applicable in the instant case as it is in context of a foreign tourist who had on it's body a gold chain which was worn and not concealed and it was a proper gold chain unlike in this case where it is unfinished and unjoined gold rings forming a chain. Here in this case the gold was clearly concealed as bought out above.

7. Another contention of the applicant is that gold jewellery belonged to her and was in a form which can be for normal personal use and the same cannot be treated as restricted for import as bonafide baggage. In this connection, it is observed that gold jewellery recovered from her is of 24 carat purity as well as unfinished and unjoined. It is common knowledge that commonly wearable gold jewellery is less than 24 carat purity and is in furnished form. Nearly 1.3 Kilograms of raw, unfinished and unjoined gold articles worn concealed under clothing and not declared to Customs cannot be considered as bonafide baggage. This only bolsters the belief that the intention of the applicant was to smuggle the gold. Moreover, the applicant herself has admitted in her own statement tendered under Section 108 of the Customs Act, 1962 that she intended to evade the Customs duty. The Government notes that the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, 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 her involvement in smuggling by concealment and the same has not been retracted.

8. 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*. 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*. 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 is in agreement with the lower authorities that the seized gold items were liable to confiscation under Section 111 *ibid* and, consequently, the applicant is liable to penalty.

9. 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. Hon'ble Supreme Court has repeatedly held that goods, in respect of which conditions subject to which their import/export is allowed are not fulfilled, 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 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, it is clear that the goods seized in the present case are to be treated as 'prohibited goods', within the meaning assigned to it under Section 2(33) of the Act, *ibid*.

10. 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."* 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"*.

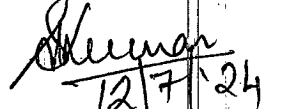
Therefore, keeping in view the judicial pronouncements above and the facts of the case, the Commissioner (Appeals) has rightly refused to interfere with the discretion exercised by the original authority.

11. The case laws relied upon by the Applicant in support of her various contentions are either not relevant in the facts of this case or are not applicable in view of the dictum of Hon'ble Supreme Court & High Courts, as above.

12. 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.

13. In view of the facts and circumstances of the case, the penalty imposed is neither harsh nor excessive.

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

  
12/7/24  
(Shubhagata Kumar)

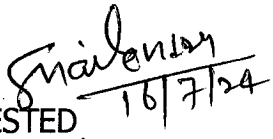
Additional Secretary to the Government of India

1. Smt. Majthunisha Banu Binti Khali Kasman  
D/o Sh. Khali kasman  
No. 18 Jalan Residensi  
6 Laman Residensi  
Sri Utara Kipark 68100  
Kuala Lumpur, W. Persekutuan (KL)

Order No. 134 /24-Cus dated 12-07-2024

Copy to:

1. The Commissioner of Customs & 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. B. Satish Sundar and K. Sanjeevi, Advocates, No. 1 Murthy Lane, Suite No. 25, Rattan Bazaar, Chennai-600003.
4. PPS to AS(RA)
5. Guard File
- ✓ 6. Spare Copy
7. Notice Board

  
16/7/24  
ATTESTED  
(शैलेन्द्र कुमार मीना)  
(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