

SPEED POST



F. No. 373/166/B/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. 29/08/24

Order No. 176 /24-Cus dated 29-08-2024 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 Application, filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. TCP-CUS-000-APP-038-20 dated 20.04.2020, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Smt. Meharaj Begum, Madurai

Respondent : The Commissioner of Customs, Tiruchirappalli

ORDER

A Revision Application, bearing No. 373/166/B/2020-RA dated 24.07.2020, has been filed by Smt. Meharaj Begum, Madurai (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-038-20 dated 20.04.2020, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, vide which the Commissioner (Appeals) has upheld the Order-in-Original No. 294/2019 dated 20.09.2019, passed by the Assistant Commissioner of Customs (Airport), Tiruchirappalli. Vide the aforementioned Order-in-Original, one gold chain, one gold necklace, one gold bangle, two gold coins and four pairs of gold earrings, all of 22 carat purity & one gold bracelet, one gold coin, one small gold chain, six gold rings and seven pairs of gold earrings, all of 21 carat purity, totally weighing 225 grams and collectively valued at Rs. 6,83,573/- 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. 68,400/- 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 Customs Officers intercepted the Applicant, an Indian passport holder, upon her arrival at Tiruchirappalli Airport, from Saudi Arabia, on 23.01.2019, when she was about to exit through the Green Channel. The officers verified from the Customs Baggage officers that she did not submit any Customs Declaration Form. Upon being asked whether she had brought any valuables or gold in any form with her, either on her person or in her baggage, she replied in the negative. When her luggage was scanned dark images were noticed in the hand luggage. Then she was again asked whether she had concealed any metal items on her body or hand luggage, to which she again replied in the negative. Thereafter on examination the officers noticed the presence of yellow metal in boxes in the hand luggage. She was once again asked whether she was carrying any metal item on her body to which she replied in the negative. During the search of her person, the officers recovered one chain and one necklace worn around her neck covered with her dupatta. The government approved assayer examined and certified the recovered items as gold of 21 & 22 carat purity as one gold chain, one gold necklace, one gold bangle, two gold coins and four pairs of gold

earrings, all of 22 carat purity & one gold bracelet, one gold coin, one small gold chain, six gold rings and seven pairs of gold earrings, all of 21 carat purity, totally weighing 225 grams and collectively valued at Rs. 6,83,573/-.

In her statement dated 23.01.2019, recorded under Section 108 of the Customs Act, 1962, the applicant stated inter-alia that she went to Saudi Arabia on 26.12.2018 where her husband was working as a supervisor; that she returned to India on 23.01.2019 along with the gold ornaments which her husband bought for her; that the gold items were bought in Saudi Arabia and she had bills for few items and did not have bills for others; that she did not have money to pay the Customs duty and she thought she could take it outside the airport without payment of Customs duty; that she had bought the items for her own use and for her relatives and all the ornaments belonged to her. The matter was adjudicated by the original authority, vide aforesaid Order-in-Original dated 20.09.2019. 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 the gold jewellery belonged to her and there was no ingenious concealment; that her signature was obtained on the statement and the same was not read over and explained to her in the language known to her; that import of gold is not prohibited and the re-export of gold be allowed. The applicant seeks that personal penalty be set aside or reduced.

4. Personal hearing in the matter was held on 15.07.2024. Ms. P. Kamalamalar, advocate appeared for the applicant along with applicant herself and her husband. The advocate submitted that the applicant and her husband are Indian nationals who worked in Dubai/SA for more than 32 years in various jobs and the impugned gold was bought from their hard-earned savings, was of 21 & 22 carat respectively, was worn by the applicant, was bought for own personal use, was not concealed and was declared to Customs at the red channel. The applicant and her husband stated that they are law abiding citizens and brought gold worn on the person from their own savings and also had bills showing purchase in their own name. He sought redemption of the gold with

reduction in penalty. No one appeared for Respondent's side. As such, it is presumed that the respondent has nothing to add in the matter.

5. The Government has examined the matter. It is observed that the impugned items were recovered from the Applicant only when she was intercepted by Customs as she did not declare the same to Customs despite repeated questioning. Moreover, the gold was found concealed in her baggage in plastic boxes and on her neck beneath her dupatta which was not visible to the naked eye. She left India on 26.12.2018 and returned on 23.01.2019 i.e. her stay abroad was less than six months and therefore she is not an eligible passenger to import gold. She has herself stated that she intended to clear the impugned goods without declaring the same and without detection by Customs. Further, she did not have any convertible foreign currency to pay the Customs duty. She has submitted photocopies of purchase bills which do not bear the name of the applicant and one bill has corrections on it raising doubts on their genuineness. Further, the issue of purchase bills has been dealt with at length by the original authority in para 5 & 33 of his order and para 6.1 by the appellate authority. Hence, these invoices cannot be accepted as proof of ownership. It is further noted that these photocopies were not produced at the time of her arrival though the quantity of the gold was far above the value permitted as per Baggage Rules, 2016.

6. 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 in her own statement has admitted her involvement in smuggling by concealment. Therefore, there is no doubt that the statement tendered was voluntary.

7. 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.

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 herein. 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 (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. Hence, there is no doubt 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.*

8.2 In view of the above, the contention of the Applicant that the impugned gold items are 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*

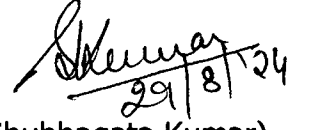
of reason and justice; has to be based on relevant considerations." Further, in the case of P. Sinnasamy (supra), the Hon'ble Madras High Court has held that *"when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason".*" Hon'ble 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."* Therefore, keeping in view the judicial pronouncements above and the facts of the case, 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 are either not relevant in the facts of this case or 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, however, the penalty imposed is reduced to Rs. 50000/- (Fifty thousand).

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


29/8/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Smt. Meharaj Begum
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Order No. 176 /24-Cus dated 29-08-2024

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. Ms. P. Kamalamalar, Advocate, No. 10, Sunk Ram Street, Second Floor, Chennai-600001.
4. PPS to AS(RA)
5. Guard File
6. Spare Copy
7. Notice Board


29/8/24
ATTESTED

(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
Government of India