

SPEED POST



F. No. 373/304/B/SZ/2019-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... 18/01/24.

Order No. 20/24-Cus dated 18-01-2024 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-034-19 dated 26.04.2019, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Smt. R.P. Sriyani Manel, Sri Lanka

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli

.....

ORDER

A Revision Application, bearing No. 373/304/B/SZ/2019-RA dated 01.08.2019, has been filed by Smt. R.P. Sriyani Manel, Sri Lanka (hereinafter referred to as the Applicant), against the Order-in-Appeal No.TCP-CUS-000-APP-034-19 dated 26.04.2019, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, whereby the Commissioner (Appeals) has upheld the Order-in-Original No. TCP-CUS-PRV-JTC-126-18 dated 02.11.2018, passed by the Joint Commissioner of Customs (Preventive), Tiruchirappalli.

2. Vide the aforementioned Order-in-Original dated 02.11.2018, the Joint Commissioner of Customs (Preventive), Tiruchirappalli adjudicated the matter and ordered:

- (i) absolute confiscation of the gold items of foreign origin totally weighing 3272.200 grams and valued at Rs. 95,95,545/- seized from 18 passengers (including 253.200 grams of gold items valued at Rs. 7,42,620/- seized from the Applicant) under Section 111(d) and 111(i) of the Customs Act, 1962;
- (ii) confiscation of the items used for concealment viz., packing materials, with no commercial valued used for concealing the smuggled gold pieces under the Section 119 of the Customs Act, 1962; and
- (iii) imposition of penalty on the 18 offenders, including Rs. 70,000/- on the Applicant under Section 112 of the Customs Act, 1962.

3.1 Brief facts of the case are that, the Applicant is a Sri Lankan passport holder, arrived from Colombo on 15.10.2017, at Coimbatore International Airport, Coimbatore. The officers of Directorate of Revenue Intelligence, Coimbatore working on specific intelligence that a group of passengers coming from Colombo to Coimbatore by Sri Lankan Airlines Flight No. UL 193 would be bringing gold items and attempting to clear the same without payment of Customs duty, intercepted 18 passengers among whom the Applicant was one and seized assorted gold items totally weighing 3272.200 grams and valued at Rs. 94,95,545/- from all 18 passengers. Out of the 18 passengers, the officers seized the following gold items from the said Applicant:-

S. No.	Form of gold	Nos.	Quantity (in gms.)	Purity	Value of gold seized (in Rs.)	Total quantity of gold seized (in grams)	Total value (in Rs.)
1	Bracelet	1	38.600	22 carat	1,10,010/-	253.200	7,42,620/-
2	Flat chain	1	84.00	24 carat	26,040/-		
3	Chain	1	57.00	22 carat	1,62,450/-		
4	Chain with dollar	1	57.600	22 carat	1,64,160/-		
5	Broken bangle	2	16.00	22 carat	45,600/-		

3.2 In her voluntary statement dated 15.10.2017, the Applicant stated inter-alia that she came to Coimbatore on a business visit and also because she could not get the flight tickets to Chennai; that though she has come to Coimbatore, her ultimate destination is Chennai; she had come to Coimbatore with the gold jewellery weighing 253.200 grams which was on her person; that when she landed in Coimbatore, the officers intercepted her when she was coming out of the green channel; that the officers asked her whether she had any gold or contraband concealed in her baggage or on her person and that she had denied any such thing, and was taken to the Customs area of the International Airport for a thorough search of her belongings by a lady officer who found the above said impugned gold jewellery on her person; that in the presence of witnesses, the government approved gold appraiser, examined, assessed and valued the above said gold jewellery totally weighing 253.00 grams at Rs. 7,42,620/-; that all the 253.200 grams of gold jewellery were seized under a mahazar; she admitted that she brought gold items in her previous visits to India also; that she was aware that smuggling of gold into India is an offence under the provisions of the Customs Act, 1962; that she again wished to state that she was aware that she was not permitted under the law to carry gold in any form into India, that the Applicant is a frequent traveler/trader and has visited India many times through various Airports in India. Thereafter, the Lower Adjudicating Authority vide the aforesaid Order-in-Original bearing No. TCP-CUS-PRV-JTC-126-18 dated 02.11.2018, adjudicated the matter and the impugned gold items were confiscated absolutely and a penalty of Rs. 70,000/- was also imposed on the Applicant. Aggrieved, the Applicant filed an appeal before the Commissioner of Customs (Appeals), Tiruchirappalli, which has been rejected.

4. The revision application has been filed, mainly, on the grounds that the order of both the adjudicating authority and appellate authority are against law, weight of evidence and probabilities of the case; the gold jewellery in question were of 22 carat purity and were worn by the Applicant on her person; both the adjudicating authority and appellate authority ought to have considered the request to permit her to re-export of the jewellery especially when her statement she had categorically stated that eventually she would take back the jewellery to Srilanka when leaving Chennai. As such, she prayed that the impugned order may be set aside and that an order be given for re-export of the gold jewellery be granted besides setting aside the personal penalty.

5. Personal hearings in the matter were fixed on 29.11.2023, 13.12.2023 and 03.01.2024, in virtual mode. But, no one appeared either from the Applicant's side or from the Respondents's side. Also, no any request for adjournment has been made. Therefore, the matter is taken up for decision based on the available records.

6.1 The Government has carefully examined the matter. The Applicant is a foreign national as well as a frequent traveler who has admitted to carrying gold on her previous trips. She is clearly not eligible to import gold as part of baggage as per the Baggage Rules, 2016. She failed to declare the gold items to the Customs authorities under Section 77 of the Customs Act, 1962 and also was not in possession of any valid license/permit/documents to prove the licit nature of import of the impugned gold items nor could she produce any purchase documents for the gold.

6.2 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 impugned goods, 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 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 concurs with the lower authorities that the impugned goods were liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant.

7.1 The Government observes that there are 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.*"

7.2 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-----."

7.3 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. 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.

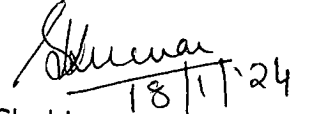
9.1 The Applicant has requested to allow the re-export of the offending goods. The Government observes that a specific provision regarding re-export of baggage articles has been made under Section 80 of the Act, *ibid*.

9.2 On a plain reading of Section 80, 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 he should be given permission to re-export." Hence, the request for re-export cannot be allowed.

10. 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.

11. The revision application is, accordingly, rejected.


18/11/24

(Shubhagata Kumar)

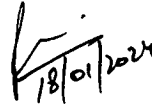
Additional Secretary to the Government of India

Smt. R.P. Sriyani Manel
(holder of Sri Lankan passport No. N7029030),
520, Biyagma Road, Pithiagoda, Kelaniya,
Halakaragamuna, Kadawatha,
Srilanka.

Order No. 20/24-Cus dated 18-01-2024

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, No. 1, Williams Road, Cantonment, Tiruchirappalli-620001
2. The Commissioner of Customs (Preventive), No.1, Williams Road, Cantonment, Tiruchirappalli-620001
3. Sh. M.A. Abdul Huck, Advocate & Notary Public, No. 12/35, First Floor, Jones Street, Mannady, Chennai-600001.
4. PPS to AS(RA).
5. Guard file.
- ✓ 6. Spare Copy
7. Notice Board


18/01/2024

ATTESTED

प्रवीण नेगी / Praveen Negi
अधीक्षक / Superintendent (R.A. Unit)
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue
Room No. 605, 6th Floor, B.Wing
14, Hudco Vishala Building, Bhikaji Cama Place
New Delhi-110066