

SPEED POST



F. No. 373/115/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. 18/10/24

Order No. 218 /24-Cus dated 18-10-2024 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-027-20 dated 20.04.2020, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Sh. Sabeer Ali, Tiruchirappalli

Respondent : The Commissioner of Customs (P), Tiruchirappalli

ORDER

A Revision Application, bearing No. 373/115/B/2020-RA dated 26.06.2020, has been filed by Sh. Sabeer Ali, Tiruchirappalli (hereinafter referred to as the Applicant), against the Order-in-Appeal No. TCP-CUS-000-APP-027-20 dated 20.04.2020, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, vide which the Commissioner (Appeals) has rejected the appeal of the Applicant filed against Order-in-Original No. TCP-CUS-PRV-JTC-037-19 dated 13.06.2019, passed by the Joint Commissioner of Customs (Airport), Tiruchirappalli vide which three unfinished/unjoined gold rings forming a chain; all items of 24 carat purity, totally weighing 449.700 grams and valued at Rs. 14,04,413/-, recovered from the Applicant, had been absolutely confiscated under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962. Besides, a penalty of Rs. 1,50,000/- 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 (AIU) intercepted the Applicant, an Indian Passport holder, while he was attempting to exit through the Green Channel upon his arrival at Tiruchirappalli Airport, from Kuala Lumpur, on 04.10.2018. It was found upon verification from the Customs Baggage Officers that the applicant had not submitted the Indian Customs Declaration Form to the Baggage Officers and had not declared any dutiable goods or valuable item. Thereafter the Customs officers asked the applicant whether he had brought any valuables or gold in any form with him either in person or in his baggage for which he replied in the negative. Thereafter he was made to pass through the Door Frame Metal Detector (DFMD) which sounded an alarm. He was again asked whether he was in possession of gold in any form with him for which he replied in the negative. Upon the search of his person a pink coloured small ladies' purse concealed in his underwear was found. Upon opening of the purse, three unfinished/unjoined yellow metal rings forming a chain were found from a pouch wrapped with yellow colour insulation tape (outer layer) & transparent polythene cover (inner layer). The Central Government approved gold assayer appraised the recovered item and certified them to be gold of 24 carat purity, weighing 449.700 grams and valued at Rs. 14,04,413/-.

In his voluntary statement dated 05.10.2018, recorded under Section 108 of the Customs Act, 1962, the Applicant stated inter-alia that an unknown person approached him to carry the gold item kept in the pink coloured ladies' purse containing the 3 gold chains to clear the same without knowledge of Customs officers and without payment of Customs duty; to hand over the same to his accomplice who would be waiting outside the Trichy airport and that he would be given Rs. 10,000/- as a monetary benefit; that first he refused to receive the gold item and later he accepted to receive the gold items for the monetary benefit which would be useful for transport expenses; that he received the purse containing the gold item and concealed the same in his underwear; that he did not possess money for payment of Customs Duty on import of gold; and that he did not have the capacity or the money for purchasing the said gold items. The matter was adjudicated by the original authority, vide the aforesaid Order-in-Original dated 13.06.2019. 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 statement of the applicant is not voluntary; that gold chain kept safely in a small purse cannot be treated as concealment; that he made an oral declaration; that import of gold is not prohibited; that gold ornaments were worn on the person of the applicant and there was no concealment; that redemption of gold be allowed; and that penalty be reduced as *mensrea* is absent in this matter.

4. Personal hearing in the matter was fixed on 12.06.2024 & 21.06.2024. No one appeared for either side on the abovementioned dates fixed for hearing. In the hearing held on 04.10.2024, Sh. Selvaraj, authorized representative appeared for the applicant and reiterated the written submissions submitted vide the application. Sh. S. Sivakumar, Superintendent Customs, Tiruchirappalli appeared for the Respondent and stated that the impugned gold was of 24 carat purity and unfinished. He sought that the OIA be upheld.

5. The Government has carefully examined the matter. It is observed that the impugned items were not declared to Customs by the Applicant and were recovered from the Applicant only when he was intercepted by Customs. The Applicant's contention that he

had verbally declared the items to Customs is not borne out by facts on record in the OIO and OIA. He has contended that the gold was not concealed but worn on his person. This again is contrary to the facts on record. In his own statement under Section 108 of the Customs Act, 1962, he has admitted that these items were concealed in a ladies' purse kept in his underwear, as he intended to clear them without declaring the same and without detection by Customs. The gold was thus ingeniously concealed. Hence, the intention to smuggle is manifest. Moreover, it is common knowledge that gold jewellery for personal use is usually less than 24 carat purity and never in an unfinished form. Thus, the impugned gold does not appear to be bonafide baggage for personal use. Further, he also did not have any convertible foreign currency to pay the Customs duty. Therefore, the Government holds that *mensrea* is established and the contentions of the Applicant are not sustainable.

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 has admitted his involvement in the case of smuggling by concealing the same. The admissions made are corroborated by other material on record, as discussed hereinabove. 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 the 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 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 is in agreement with the lower authorities

that the seized gold items were liable to confiscation under Section 111 *ibid* and, consequently, the Applicant was 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. The 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. 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 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.

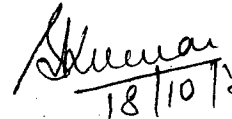
9. The Government observes that the original authority had denied the release of seized gold items on payment of redemption fine under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, 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.*" 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 correctly refused to interfere with the discretion exercised by the original authority.

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

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


18/10/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Sabeer Ali
S/o Sh. Usman Ali
No. 37/23, Kayithe Milath Colony
Mela Chinthamani, Trichy Urban
Tiruchirappalli-620002.

Order No. 218 /24-Cus dated 18-10-2024

Copy to:

1. The Commissioner of Customs & 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.
4. PPS to AS(RA)
5. Guard File

6. Spare Copy
7. Notice Board

Shailendra
21/10/24
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)