

**SPEED POST**



F. No. 380/97/B/2016-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..17/10/23

Order No. 242/23-Cus dated 17/10-2023 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 C.Cus I No. 599/2015 dated 30.09.2015, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Pr. Commissioner of Customs, Chennai-I

Respondent : Sh. Sunny Kanyalal Wirwani, Thane

.....

**ORDER**

A Revision Application, bearing No. 380/97/B/2016-RA dated 03.06.2016, has been filed by Pr. Commissioner of Customs, Chennai-I (hereinafter referred to as the Applicant department), against the Order-in-Appeal C. Cus I No. 599/2015 dated 30.09.2015, passed by the Commissioner of Customs (Appeals-I), Chennai, vide which the Commissioner (Appeals) has set aside the Order-in-Original passed by the Joint Commissioner of Customs (Airport), Chennai, bearing no. 124/2015-16-Airport dated 09.06.2015. Vide the aforementioned Order-in-Original, two gold bits of 24 carat purity, totally weighing 399 grams and collectively valued at Rs. 10,91,265/-, recovered from Sh. Sunny Kanyalal Wirwani, Pune (hereinafter referred to as the Respondent), had been absolutely confiscated under Section 111(d) & 111(l) of the Customs Act, 1962. Besides, penalty of Rs. 1,00,000/- was also imposed on the Respondent, under Sections 112(a) of the Act *ibid*.

2. Brief facts of the case are that the Respondent arrived at Chennai Airport, from Trivandrum, on 15.12.2014, and as he was walking out through the Customs Green Channel, he was intercepted by Customs Officers. He had filled up the value of the gold bullion and gold jewellery carried by him as 'NIL' in his passenger Customs Declaration Form. The flight he deboarded from, was on international run, coming from Sharjah to Chennai via Trivandrum. The Respondent was asked whether he was carrying gold/contraband in his baggage or person to which he replied in the negative. Upon the search of his person, one black colour adhesive taped packet was recovered from his pant pocket which was concealed in a handkerchief and on opening of the said packet 02 nos of yellow colour metal bits with foreign markings in one and no markings on the other were recovered. The Government of India approved Gold Appraiser examined and certified the recovered 02 nos of yellow-coloured metal bits to be gold of 24 carat purity, totally weighing 399 grams and also appraised the value of the same at Rs. 10,91,265/-. The Respondent was neither in possession of any valid permit nor was he eligible to bring gold as per Rule 6 of Baggage Rules, 1998. The Respondent, in his statement recorded under Section 108 of the Customs Act, 1962 immediately after the seizure was made, stated inter-alia that he had gone to Trivandrum for trading purpose on 14.12.2014 and returned on 15.12.2014; that the gold was given to him by an unknown person aged around 40 years with medium complexion near the toilet of the aircraft during the flight; that he was offered Rs. 6000/- for handing over the same to a receiver outside Chennai airport who would approach him; that he was told to conceal the gold in his pant pocket and not declare to Customs; that he concealed the gold in his pant pocket inside the toilet; that he did not see where the said person was sitting in the aircraft; that he did not see that person in the arrival hall also; that he had intended to smuggle the gold by concealment and non-declaration; that he is not the owner of the gold; and that he was taken outside the airport discreetly by Customs but nobody approached him for the gold. He admitted his offence and requested to be pardoned. The original authority, vide aforesaid Order

dated 09.06.2015, ordered for absolute confiscation of the gold bits recovered from the Respondent, under Sections 111(d) & 111(l) of the Customs Act, 1962 and imposed penalty of Rs. 1,00,000/-, under Section 112(a) of the Act, *ibid*. Aggrieved, the Respondent filed an appeal before the Commissioner (Appeals), which was allowed.

3. The revision application has been filed mainly on the grounds that the Respondent was not eligible to import gold as per Rule 6 of the Baggage Rules, 1998; that he contravened the provisions of Section 77 of the Customs Act, 1962 and therefore the gold is liable for absolute confiscation.

4. A personal hearing in the matter was fixed on 03.02.2023 but no one appeared for the Respondent. Another opportunity was granted on 24.04.2023 in which Sh. A. Ganesh, Advocate appeared for the Respondent and submitted that the case had been recently assigned to him and hence, 04 weeks' time may be granted to him. The request was granted. The next personal hearing was scheduled for 29.08.2023 in which Sh. Karhiravan, Assistant Commissioner, appeared for the Applicant department and stated that the Respondent accepted in his statement recorded u/s 108 of the Customs Act, 1962, that the impugned gold was accepted by him from an international passenger and also that his statement was voluntary. Therefore, Commissioner (Appeals)'s order is arbitrary and should be set aside. The Advocates on behalf of the Respondents sought redemption fine plus duty instead of absolute confiscation and stated that they have been approaching the Hon'ble High Court for allowing the option to re-export to the Applicant, but that among the bunched cases, this option has not been given as he was a domestic passenger. Sh. A. Ganesh questioned the jurisdiction of the revisionary authority in this case and stated that the word "baggage" refers only to import/export of personal effects in international travel, whereas his client was a domestic passenger. The AC reiterated that the Respondent accepted goods from an international passenger for handing over to the intended recipients and these were concealed in black tape and had foreign markings.

5. It is pertinent to mention here that the Respondent filed Writ Petition No. 17975 of 2016 before Hon'ble High Court of Madras praying to direct the department to implement the order passed by the Commissioner(Appeals) vide OIA dated 30.09.2015. The Hon'ble High Court disposed of the aforesaid Writ Petition by directing the Respondent department to release the goods (gold), subject to the petitioner complying with the conditions imposed in the order passed by the Commissioner (Appeals) along with cash payment of 5% of the value of the goods to the Commissioner of Customs, Chennai and get receipt from the department within a period of one week from the date of receipt of a copy of that order.

6. At the outset, it is observed that Hon'ble High Court of Madras ordered for release of goods subject to the petitioner (the Respondent in this RA) complying with the conditions imposed in the order passed by the Commissioner (Appeals), i.e. payment of redemption fine & personal penalty; and also directed the petitioner to give an undertaking to comply with the Order-in-Original, in the event that the department succeeds in the revision. The petitioner was also directed to pay 5% of the value of the goods in cash to the Commissioner of Customs, Chennai and get a receipt from the Commissioner, within a period of one week from the date of receipt of a copy of that order. However, as per letter dated 14.09.2023 received from the Applicant department, it is learnt that the petitioner has not approached the Applicant department after the Hon'ble High Court's order for redeeming the goods with the said undertaking.

7.1 The Government observes that the Respondent was intercepted while passing through the Customs Green Channel. The Respondent has admitted to the recovery of gold items from him and also that he intended to clear the gold by evading customs duty for monetary benefit. The manner of concealment by taking up the gold in adhesive tapes and then wrapping in a handkerchief establishes the intent to bring in the gold by evading customs duty. Further, the entire proceedings have been covered under Mahazar, in the presence of two independent witnesses, which also corroborates the sequence of events. Hence, the contention of the Applicant department that the passenger did not declare the goods under Section 77 of the Customs Act, 1962 is correct.

7.2 It is seen that in terms of Rule 6 of the Baggage Rules, 1998:-

"A passenger returning to India shall be allowed clearance free of duty jewellery in his bona fide baggage to the extent mentioned in column (2) of Appendix D"

APPENDIX D	
1	Articles allowed free of duty 2
Indian passenger who has been residing abroad for over one year.	(i) Jewellery upto an aggregate value of Rs.50,000 by a gentleman passenger, or (ii) Upto an aggregate value of Rs.1,00,000 by a lady passenger.

In the instant case, the Respondent did not fulfill the conditions required under Rule 6 of Baggage Rules, 1998 for claiming the benefit of duty free allowance of gold.

7.3 Further, as per Notification No. 12/2012 dated 17.03.2012, as amended, the term 'eligible passenger' is defined as a passenger of Indian origin or a passenger holding a

valid passport, issued under the Passports Act, 1967 (15 of 1967), who is coming to India after a period of not less than six months of stay abroad; and short visits, if any, made by the 'eligible passenger' during the aforesaid period of six months shall be ignored if the total duration of stay on such visits does not exceed thirty days and such passenger has not availed of the exemption under this notification or under the notification being superseded at any time of such short visits can bring gold upto 1 Kg and the duty has to be paid @10% on the value of gold and the duty has to be paid in foreign currency. The original authority has correctly observed in para 10 of the aforesaid Order-in-Original that one of the conditions of the aforesaid notification is that duty has to be paid in convertible foreign currency and as no foreign currency was found on the Respondent, the benefit of notification could not have been granted to him. Further, as per proviso to condition 35, the Applicant was, in terms of Section 77 also required to make a declaration in this regard, which has also not been done in this case. Hence, the contention of the Applicant department that he was an ineligible passenger to avail benefit of the said notification is correct.

7.4 Since the Respondent is found to be an ineligible passenger, his bringing gold into India becomes 'prohibited'. The bringing of gold, in baggage, is permitted subject to certain conditions, which have not been fulfilled in the present case. Hence, keeping in view the law settled by the Apex Court, in the cases of Sheikh Mohd. Omer {1983 (013) ELT 1439 (SC)}, Om Prakash Bhatia {2003 (155) ELT 423 (SC)} and Raj Grow Impex LLP {2021 (377) ELT 0145 (SC)}, it has to be held that the offending gold is to be treated as 'prohibited goods', since the conditions subject to which gold can be brought into India have not been fulfilled.

8. The Government observes that the original authority had denied the release of seized goods 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."* In the present case, the original authority has ordered for absolute confiscation, for the relevant and reasonable considerations specifically recorded in para 12 of the OIO. 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"*. Hence, keeping in view the ratio of the decisions aforesaid, the Commissioner (Appeals) had rightly not interfered in the matter.

9. Further, as far as permitting 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 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 Respondent 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 does not merit consideration.

10. In the facts and circumstances of the case, the revision application is allowed and the Order-in-Original dated 09.06.2015 is restored.

*Shubhagata Kumar*  
17/10/23

(Shubhagata Kumar)

Additional Secretary to the Government of India

The Pr. Commissioner of Customs,  
Commissionerate-I, Chennai Airport,  
New Custom House, GST Road,  
Meenambakkam, Chennai-600027.

Order No. 242/23-Cus dated 17-10-2023

Copy to:

1. The Commissioner of Customs (Appeals-I), 3<sup>rd</sup> Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
2. Sh. Sunny Kanyalal Wirwani, Jai Bhawani Tower, 7<sup>th</sup> Floor Flat 702, Ulhasnagar-421002, Thane.
3. Sh. A. Ganesh, Advocate, F Block 179, IV Street, Annanagar(East), Chennai-600102.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

*Shailendra Kumar Meena*  
18/10/23  
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