

SPEED POST



F. No. 373/258/B/SZ/2018-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: 30/10/23

Order No. 258 /23-Cus dated 27/10/2023 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. 183/2018 dated 16.04.2018, passed by the Commissioner of Customs (Appeals), Bengaluru.

Applicant : Smt. Gnanasavunthari Krishnapillai c/o Smt. Sangeetha Rajaratnam

Respondent : Pr. Commissioner of Customs, Airport & Air Cargo Complex, Bengaluru.

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ORDER

A Revision Application, bearing No. 373/258/B/SZ/2018-RA dated 31.07.2018, has been filed by Smt. Gnanasavunthari Krishnapillai, Trincomalle (Sri Lanka) c/o Smt. Sangeetha Rajaratnam (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 183/2018 dated 16.04.2018, passed by the Commissioner of Customs (Appeals), Bangalore. The Commissioner (Appeals) vide the impugned OIA, modified the O-I-O No. 38/2017-18 dated 29.11.2017 passed by the Additional Commissioner of Customs, Kempegowda International Airport, Bangalore, to the extent that the applicant was given an option to redeem the gold for re-export confiscated vide the above mentioned OIO upon payment of redemption fine of Rs.1,62,000/-, penalty of Rs.2,50,000/- imposed under Section 112 of Customs Act,1962 was reduced to Rs.1,50,000/- and penalty of Rs.2,00,000/- imposed under Section 114 AA of the Act, ibid, was reduced to Rs.1,00,000/-.

2. Brief facts of the case are that the Applicant, a Sri Lankan citizen holding passport number N2643961, arrived at Kempegowda International airport, Bangalore on 19.01.2017. Upon a reasonable belief that the applicant was in possession of gold, the applicant was intercepted by Customs Officers and she was asked as to whether she was carrying any dutiable or prohibited items, to which the applicant replied in negative. Thereafter, after obtaining her approval, the Applicant was subjected to physical search by the Lady Customs officer by using the hand held metal detector. When the metal detector was moved around Applicant's neck and hand, it gave a long beep indicating presence of some metallic substance around neck and hand underneath the sweater worn by the Applicant. After the Applicant was repeatedly questioned, she admitted that she was wearing a gold chain and two gold bangles which had been neatly concealed underneath the sweater worn by her. Total weight of the gold items recovered was 277.08 grams valued at Rs. 8,17,386/-. Purity of the recovered gold items was ascertained to be 24 carat. The items were not declared by the Applicant and were attempted to be smuggled into India. The impugned gold was seized under Section 110 of the Act ibid under mahazar dated 19.01.2017. The Applicant in her voluntary statement given under Section 108 of the act ibid stated that she was carrying the recovered gold items in a concealed manner to avoid detection from the customs authorities. After due process of law,

Additional Commissioner of Customs, Kempegowda International Airport, Bangalore vide O-I-O No. 38/2017-18 dated 29.11.2017 confiscated the recovered gold items weighing 277.08 grams valued at Rs 8,17,386/-. He also imposed a penalty of Rs.2,50,000/- under Section 112 (a) and a penalty of Rs.2,00,000/- under section 114 AA of the act ibid on the Applicant. Aggrieved , the applicant preferred an appeal with the Commissioner (Appeals).The Commissioner (Appeals) vide the impugned OIA modified the order of the original authority to the extent that the Applicant was allowed to redeem the confiscated goods on payment of a redemption fine of Rs. 1,62,000/- under Section 125 of the Act ibid and to take back the goods back to Sri Lanka. Further, penalties imposed in the original order under Section 112(a) and Section 114 AA were reduced to Rs. 1,50,000/- and Rs.1,00,000/- respectively.

3. The revision application has been filed mainly on the grounds that there was no concealment and no attempt to smuggle as the gold jewellery was worn on the person and due to winter sweater was worn by the applicant and that the Applicant is an innocent Sri Lankan citizen who had come to drop her foster daughter at the son-in law's house at Bengaluru and she was not aware of the legal restrictions and Indian Customs Rules. The respondent department vide its letter dated 18.08.2023 submitted that no further submission was necessitated from its end as the applicant has not raised any question of law nor averted on basis of any new facts of the case. The respondent department further requested this revisionary authority to decide the revision application on the facts and circumstances of the case and the gravity of the offence by the applicant (Sri Lankan citizen).

4.1. In the personal hearing held on 29.08.2023, in virtual mode, Sh. G.B. Eswarappa, Advocate appeared for the Applicant and submitted that his clients are foreign nationals and genuine passengers; that they did not bring gold in any commercial quantity; that the impugned gold jewellery was bought from the sale proceeds of property sale; that they have documentary proof of the same; that there was no ingenious concealment and that a sweater is a common wear in cold weather and that it is customary for married women to wear jewellery in their neck and hands. He prayed for a lenient view in the matter and reduction in penalty.

4.2. During the personal hearing held on 29.08.2023, the counsel of Applicant submitted a copy of sale of land agreement dated 12.01.2017 executed at Trincomalee (Sri Lanka) which evidences that a piece of land was sold by Mrs. Nageshwary Rajaratnam for a sum of Rs. 35,00,000/-. Further copy of a bill No.116 dated 16.01.2017 issued by M/s Jothigaa Jewellery, Trincomalee in the name of one Sh. P. Rajarathnam was also submitted. The bill shows that 687.410 grams of gold of 24 Carat purity was purchased by Sh. P. Rajarathnam.

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 under the sweater. 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*. Even when she was asked as to whether she possessed any dutiable/prohibited goods, she replied in the negative. It was only when, after obtaining her approval, she was subjected to a body search by a lady customs officer, that gold items on her person were recovered.

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, such was not in the case of the Applicant. The gold items recovered may have been worn by the Applicant, but were worn underneath her sweater in a manner that was not easily visible to others. 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 she had no intention of smuggling the impugned gold items. 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 detection from the customs authorities. Had she not been intercepted, the Applicant herein, would have moved out of the Customs area 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 (Cr.) 1974/2021}, vide judgment dated 03.01.2022, upheld the punishment imposed in a case where the passenger was found carrying gold concealed inside the body around the waist and thigh wherein the department had, *inter-alia*, alleged 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 have any intention of smuggling the impugned gold items.

6. The Government observes that the Commissioner (Appeal) in the impugned OIA has recorded that the bona-fide ownership of the impugned gold items has been established and has accordingly allowed the Applicant to take back the impugned gold items back to Sri Lanka after payment of the redemption fine imposed. The Commissioner (Appeals) has taken into account the background and the antecedents of the Applicant as reason for allowing her option in lieu of confiscation and thereafter re-exports of the offending goods. The Government observes that the Respondent department has decided not to contest the reasoning assigned by the Commissioner (Appeals) nor has any further

evidence to the contrary been adduced. Further, the evidentiary documents produced by the Applicant, as mentioned in para 4.2 above, before this forum have not been produced before lower authorities. As such, it appears that the documents produced at the revisionary stage are nothing but an afterthought.

7. The Government observes that the Applicant has been extended considerable relief in the impugned OIA, hence, in light of the facts and circumstances of the case discussed in the preceding paras, the quantum of penalty reduced in the impugned OIA imposed is just and fair and the impugned OIA merits no further interference.

8. The revision application is rejected for reasons aforesaid.

Shubhagata Kumar
27/10/23
(Shubhagata Kumar)

Additional Secretary to the Government of India

1. Smt. Gnanasavunthari Krishnapillai c/o Smt. Sangeetha Rajaratnam
#995, 11th Main, 1st Block, 3rd Stage,
Basavershwara Nagar,
Bengaluru-560079.
2. Smt. Gnanasavunthari
D/o Sh. Krishnapillai,
No. 204-9, Lower Road,
ORRS Hill, Trincomalee,
Sri Lanka

Order No. 258 /23-Cus dated 27/10/2023

Copy to:

1. The Commissioner of Customs (Appeals), Bengaluru, 4th Floor, BMTC Building above BMTC Bust Stand, Old airport Road, Domlur Bengaluru-560071
2. The Pr. Commissioner of Customs, Airport & Air Cargo Complex, 3rd Floor, Air India SATS, Air Freight Terminal, Kempegowda, Bengaluru-560300.
3. Sh. G.B.Eswarappa, Advocate, Sumana, 1st floor, No. 1711-1712, 5th Main Road, Judicial layout, GKVK Post, Bengaluru-560065.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED

27/10/2023
सरबजीत सिंह / SARABJEET SINGH
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