

**SPEED POST**



F.No. 373/21/B/2019-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...15/11/23.

Order No. 272/23-Cus dated 15-11-2023 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 Applications under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No. TCP-CUS-000-APP-200-18 dated 31.10.2018, passed by the Commissioner of CGST, Service Tax & Central Excise (Appeals), Tiruchirappalli

Applicant : Shri Abdul Jaleel, Dindigul

Respondent : The Commissioner of Customs (Preventive), Tiruchirappalli

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**ORDER**

Revision Application No. 373/21/B/2019-RA dated 04.02.2019 has been filed by Shri Shri Abdul Jaleel, Dindigul (hereinafter referred to as the Applicant) against the Order-in-Appeal No. TCP-CUS-000-APP-200-18 dated 31.10.2018, passed by the Commissioner of CGST, Service Tax & Central Excise (Appeals), Tiruchirappalli. The Commissioner of Customs (Appeals) has upheld the Order-in-Original of Assistant Commissioner of Customs, Tiruchirappalli, bearing no. 102/2018 dated 27.04.2018. Vide aforementioned Order-in-Original, the following has been ordered:-

- (i) absolute confiscation of five gold chains, two gold bracelets and one gold ring, all of 22 carat purity, totally weighing 116.00 grams and valued at Rs. 3,18,768/- under Section 111(d), (i), (l) and (m) of the Customs Act, 1962;
- (ii) absolute confiscation of the black colour carbon paper and two Polythene covers (No Commercial Value) used for concealing the gold items under Section 119 of the Customs Act, 1962 and
- (iii) a penalty of Rs. 32,000/- has been imposed on the appellant under Section 112(a) and 112(b) of the Customs Act, 1962.

2. Brief facts of the case are that the Applicant who had arrived from Kuala Lumpur, Malaysia on 17.08.2017 was intercepted by Customs officers when he was crossing the Green channel at Trichy Airport. Upon the search of his baggage, the officers recovered one small bundle covered with carbon paper containing two transparent polythene covers in which he had concealed five gold chains, two gold bracelets and one gold ring, all of 22 carat purity, totally weighing 116.00 grams, valued at Rs. 3,18,768/-. The Applicant was neither in possession of any valid document for the legal import of the gold item into India nor had he declared the same to the Customs. He also had no foreign currency to pay the customs duty. The Applicant, in his statement recorded under Section 108 of the Customs Act, 1962 stated inter alia that he intended to clear the gold items without payment of Customs duty by concealing the same inside his black Colour shoulder bag; that he did not possess any license/permit/receipt to import gold into India; that he very well knew that

the import of gold from abroad and attempting to clear them without declaring to the Customs, by way of concealment for evading Customs duty is an offence; that he did not have any objections to the seizure of the said gold items by the Government; that the above said gold items belong to him and he accepted his offence.

3. The revision application has been filed mainly on the grounds that the order of Learned Commissioner of Customs (Appeals) is wholly unfair, unreasonable, unjust, biased, arbitrary and contrary to the established legal principles in the matter of conduct of quasi-judicial proceedings and passing of order which has cut into the root of the issue; he has brought the impugned gold jewellery as a bonafide passenger and the allegation of non-declaration and concealment is not maintainable; gold is not a prohibited item and an option of redemption to be allowed;. Accordingly, it has been prayed that the Applicant may be permitted to take release of the gold jewellery on reasonable payment of fine, reduce the penalty imposed.

4. Personal hearing in the matter was scheduled on 14.08.2023 which was postponed to 28.08.2023 and further personal hearings were fixed on 20.09.2023 and 11.10.2023 respectively, but no one appeared for either side nor has any request for adjournment been received. Therefore, the matter is taken up for disposal based on the available records.

5. The Government has carefully examined the matter. It is observed that the Applicant was intercepted at the Exit Gate after passing through the Customs Green Channel. The Applicant admitted the recovery of gold item from his baggage and also that he intended to clear the gold items by way of concealment, without declaring to the Customs, without payment of Customs duty and to sell it in India to fetch more profit; that the Applicant was a short visit passenger, not in possession of either any convertible foreign currency to pay the Customs duty or valid permit/license/document for the legal import of gold. The Applicant was not an eligible passenger to import gold as part of baggage.

6.1 Another contention of the Applicant is that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is against several judgments of Hon'ble Supreme Court wherein 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 fulfillment 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."

6.2 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-----."

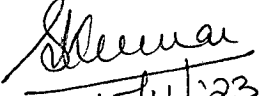
6.3 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

7. 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 gold items, as stipulated under Section 77 of the Act, *ibid* and no documents evidencing ownership or licit purchase have been produced. 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 agrees with the lower authorities that the seized gold item was liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant.

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 well-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. In view of the facts and circumstances of the case, the quantum of penalty imposed is neither harsh nor excessive.

10. The revision application is, accordingly, rejected.

  
15/11/23  
(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Abdul Jaleel,  
S/o Shri Ahamed,  
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Order No. 272/23-Cus dated 15-11-2023

Copy to:

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2. The Commissioner of Customs (Preventive), No.1, Williams Road, Cantonment, Tiruchirappalli-620001
3. Shri B. Kumar, B.K. Associates (Consultant), "Time Tower", Room No.4, II Floor, (Opp. P.T. School), 169/84, Gengu Reddy Road, Egmore, Chennai-600008
4. PPS to AS (RA).
5. Guard file.
- ✓ 6. Spare Copy
7. Notice Board

ATTESTED

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