

**SPEED POST**



F. No. 373/210/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. 22/2/24

Order No. 55/24-Cus dated 22-02-2024 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. CAL-EXCUS-000-APP-118-2019 dated 12.03.2019 passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Cochin.

Applicant : Smt. Rukksabi Sulaiman, Kozhikode

Respondent : The Commissioner of Customs (P), Cochin

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**ORDER**

A Revision Application, bearing No. 373/210/B/2019-RA dated 21.05.2019, has been filed by Smt. Rukksabi Sulaiman, Kozhikode (hereinafter referred to as the Applicant), against the Order-in-Appeal No. CAL-EXCUS-000-APP-118-2019 dated 12.03.2019, passed by the Commissioner of Central Tax, Central Excise & Customs (Appeals), Cochin, vide which the Commissioner (Appeals) has upheld the Order-in-Original of the Additional Commissioner of Customs, Calicut International Airport bearing No. 07/2018 dated 07.02.2018. Vide the aforementioned Order-in-Original, two gold chains and four gold bangles, totally weighing 466 grams and collectively valued at Rs. 14,30,620/- (market value) & Rs. 12,47,366/- (tariff value), recovered from the Applicant, had been held liable to confiscation under Section 111(d), (i), (j), (l), (m) & (o) of the Customs Act, 1962, however, they were allowed to be redeemed on payment of appropriate duty and fine of Rs. 3,50,000/-. Besides, penalty of Rs. 1,40,000/- was also imposed on the Applicant, under Section 112(a) & (b) of the Act, *ibid*.

2. Brief facts of the case are that, on 13.01.2018, based on a tip off, the Applicant was intercepted by Customs officers at the exit gate at Calicut International Airport from Bahrain. Upon enquiry as to whether she was in possession of any non-duty paid gold, she replied in the negative. The hand-held metal detector indicated presence of metallic objects which appeared to be concealed in her burka. After sustained questioning, she admitted to gold ornaments concealed on her body under the burka. Thereafter, upon the search of her person, 466 grams of gold ornaments were recovered from her. In her statement, she stated that she was staying with family in Bahrain and the gold was brought in connection with the marriage of her daughter; that she was not aware that duty was to be paid for the gold and there were restrictions in bringing in the gold; that she was intercepted by the Customs officials while going out through the green channel; and that the gold was seized from her under a mahazar and that she had signed the statement. The matter was adjudicated by the original authority vide the aforesaid order dated 07.02.2018. Aggrieved, she filed an appeal before the Commissioner (A) which has been rejected.

3. The revision application has been filed mainly on the grounds that she was not allowed to declare the gold; that the gold was brought for her daughter's marriage; that

despite being requested CCTV footage was not verified; that she was an eligible passenger, she intended to declare it and pay the customs duty leviable on it. It is prayed that the gold be either released for re-export or redeemed on payment of appropriate customs duty and penalty be set aside.

4. Personal hearing in the matter was fixed on 06.11.2023, 22.11.2023 and 04.12.2023. No one from either side appeared on any one of the dates. However, Sh. Moideen Muhammed Haji, advocate for the applicant sent in a written submission vide email dated 30.11.2023 in lieu of personal hearing and requested that the matter be decided on the basis of the written submission. Hence, the matter is taken up for disposal accordingly.

5. The Government has examined the matter. It is observed that the impugned items were recovered from the Applicant only upon the search of her person after she was intercepted by Customs as she did not declare the same to Customs. Even upon being asked specifically, she denied having any gold with her though she herself later admitted that in her statement. It is noted that the proceedings were carried out under a Mahazar which is signed by two independent witnesses for corroboration. Further, no foreign currency was found with the Applicant at the time of interception nor were any documents related to the licit purchase of the impugned gold produced by her. Hence, the Applicant's contention that she was not allowed to declare the gold, that she intended to declare it and pay the customs duty are not acceptable, as she was intercepted at the exit gate and would have left undetected, but for the interception.

6. Another contention of the Applicant is that she is an eligible passenger. Even if that were so, 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 with the Applicant, the benefit of notification could not have been granted to her. Further, as per proviso to condition 35, the Applicant was required to make a declaration in this regard, which has also not been done in this case. Hence, the contention of the Applicant that she was eligible for benefit of the notification also.

7. Further, as regards the CCTV footage, it is observed that this issue was not raised before the original adjudicating authority or at the appellate stage which is surprising, Since CCTV footage is normally stored for a finite period only and more than six years have lapsed since then. Further, the Hon'ble Madras High Court has, in the case of S. Vardharajan vs. Commissioner of Customs, Tuticorin {2019 (370) ELT 194 (Mad.)}, held that "*11. Right to seek certain documents from the department during the enquiry can be considered as vested right, if those documents are relied upon by the department in the Show Cause Notice. ----- . At the same time, if the department has not relied upon on certain documents, which are sought to be furnished by the other side, certainly, there is no vested right on the person to seek such documents, in the domestic enquiry/adjudicatory proceedings.*" It is on record that the gold was detected concealed on her body inside the burka when she was crossing the Door Frame Metal Detector. Further, the Hon'ble Supreme Court has, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}, held that "We find no force in this contention. The Customs officials are not police officers. The confession..... is an admission and binds the petitioner." 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, it is seen that the Applicant has admitted her involvement in the case of smuggling when she deposed before Customs.

8. 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 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. Further the gold was concealed upon her person inside the Burka which was not declared even upon questioning. Hence, the intent to smuggle is obvious. 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 is in agreement with the lower authorities that the seized gold items were liable to confiscation under Section 111 *ibid* and, consequently, the applicant is liable to penalty.

9. 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. 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*.

10. The Government observes that the original authority had allowed 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.*" Further, in the case of P. Sinnasamy (*supra*), the Hon'ble Madras High Court has held that "*when discretion is exercised under Section 125 of the Customs Act, 1962, ----- the twin test to be satisfied is "relevance and reason"*." 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

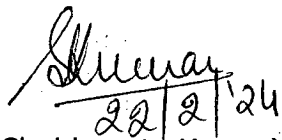
dated 21.08.2023 in W.P. (C) Nos. 8902/2021; 9561/2021; 13131/2022; 531/2022; & 8083/2023 held that ".....an infraction of a condition for import of goods would also fall within the ambit of Section 2(33) of the Act and thus their redemption and release would become subject to the discretionary power 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.

11. Further, as far as 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, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export in terms of Section 80 ibid. 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. In this case, the Applicant had made no written 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 option of re-export also cannot be given.

12. However, in view of the facts and circumstances of the case, the penalty is reduced to Rs. 1 Lakh.

13. The revision application is disposed of accordingly.

  
22/2/24  
(Shubhagata Kumar)

Additional Secretary to the Government of India

Smt. Rukkasabi Sulaiman  
W/o Muhammed Ali Mahamood Thayyil  
Puthiottil Thaza House, Payyoli  
Meladi P.O, Kozhikode, Kerala-673523

Order No. 55724-Cus dated 22.02.2024

Copy to:

1. The Commissioner of Customs (P), 5<sup>th</sup> Floor, Catholic Centre, Broadway, Cochin-682031.
2. The Commissioner of Central Tax, Central Excise & Customs (Appeals), C.R Building, I.S Press Road, Cochin-18.
3. Sh. Moideen Muhammed Haji, S/o Muhammed Haji, Puthiyattil Thaza House, Payyoli Bazar, Kozhikode, Kerala-673523.
4. PPS to AS(RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

*Shailendra*  
22/01/24  
ATTESTED

(शैलेन्द्र कुमार मीना)  
(Shailendra Kumar Meena)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
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