

**SPEED POST**



F. No. 373/380/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. 22/03/24

Order No. 83/24-Cus dated 22-03-2024 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 Airport C.Cus.I No. 174/2019 dated 04.09.2019, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Sh. Udayakumar Poolam Chalil, Kannur

Respondent : Pr. Commissioner of Customs, Chennai-I

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**ORDER**

A Revision Application, bearing No. 373/380/B/2019-RA dated 17.09.2019, has been filed by Sh. Udayakumar Poolam Chalil, Kannur (hereinafter referred to as the Applicant), against the Order-in-Appeal Airport C.Cus.I No. 174/2019 dated 04.09.2019, passed by the Commissioner of Customs (Appeals-I), Chennai, vide which the Commissioner (Appeals) has upheld the Order-in-Original No. 157/2018-19-Commissionerate-I dated 22.11.2018, passed by the Joint Commissioner of Customs (Airport), Chennai. Vide the aforementioned Order-in-Original, two crude gold chains of 24 carat purity, totally weighing 499 grams and collectively valued at Rs. 15,66,361/- recovered from the Applicant, 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 Applicant, under Section 112(a) of the Act, *ibid*.

2. Brief facts of the case are that the Customs Officers intercepted the Applicant upon his arrival at Chennai Airport, from Singapore, on 06.09.2018 when he was about to exit the arrival hall after passing through the Green Channel. He was questioned as to whether he was in possession of dutiable goods i.e. gold/gold jewellery either in his baggage or on his person, to which he replied in the negative. He was once again-asked before the commencement of the search of his person and his baggage as to whether he was in possession of gold/gold jewellery either in his baggage or on his person and if he has anything to declare. He replied that he was carrying personal effects only and he was not carrying any gold or gold jewellery either in his baggage or on his person and had nothing to declare. Upon the search of his person, two crude gold chains were recovered, one crude chain of yellow colour metal worn by him around his neck and another was found concealed around the waist, tied with black colour thread. Thereafter the Government of India approved Gold Appraiser examined both the chains and certified them to be of 24 carat purity, totally weighing 499 grams and valued at Rs. 15,66,361/-.

In his statement immediately after the seizure, recorded under Section 108 of the Customs Act, 1962, the applicant stated *inter-alia* that he was working as a driver in Thalassery and earning around Rs. 10,000/- per month; that both the gold chains were given to him by an unknown person outside the Singapore airport with instructions to smuggle the same by evading detection by Customs. He was instructed to hand over the same to an unknown person who would recognize him by his photo and collect the same from him outside Chennai airport and pay him Rs. 10,000/-; He also stated that he was well aware that smuggling gold by concealment and not declaring it to Customs is an offence; and that he committed this offence for monetary benefit only.

The matter was adjudicated by the original authority, vide aforesaid Order-in-Original dated 22.11.2018. 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 appellate authority did not give him sufficient opportunities to represent himself while deciding the case; that gold is not a prohibited item; that his statement is not voluntary and was obtained under duress; that he was all along under the control of the officers of customs and was at the Red Channel;; that re-export or release of the gold chain may be permitted; and that personal penalty imposed upon him be set aside or reduced.

4. Personal hearing in the matter was fixed on 22.01.2024 which was postponed at the request of the Applicant. In the hearing held on 06.03.2024, Sh. Dipu Sachdev, Advocate appeared for the Applicant and submitted that the OIA is not a speaking order; that the Customs Department does not have a shred of evidence to establish that the applicant was a smuggler or carrier; that passing through manned gates/electronic detectors is itself a form of declaration and no separate declaration is warranted; that the applicant is a Malayalam speaking person, educated upto 10<sup>th</sup> Class only, so his mistake ought to be put down to ignorance and lack of understanding of procedure and therefore condoned; and that he only brought 499 grams of gold in the form of 24 carat ornaments. He sought 7 days' time to make written submissions, which was given. Sh. Ramesh S., Assistant Commissioner appeared for the Respondent and contended that ignorance of law is no excuse; that no new evidence is admissible at this stage; that the OIA is legal and proper and should be upheld.

5. The Government has carefully examined the matter. It is noticed from the order of appellate authority that the advocate of the applicant was granted personal hearing on 16.08.2019 which he attended and made his submissions. So the contention of the Applicant that the appellate authority did not give him sufficient opportunities before deciding the case is not borne out by the facts on record.

6. The Government observes that the impugned items were recovered from the Applicant only when he was intercepted by Customs as he did not declare the same to Customs. Moreover, he has himself stated in his statement recorded under Section 108 of the Customs Act, 1962 that these items were brought into India for sale and monetary gain. He could also not produce any proof of purchase or legal acquisition. Hence, the contention of the Applicant that he was all along under the control of the officers and was at the Red Channel is not sustainable. The contention that passing through manned gates or Door Frame Metal Detectors is itself a declaration cannot be accepted. These are security measures and not a tool for baggage declaration.

7. 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 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 gold and deliberately not declaring it even after repeated questioning. Therefore, the contentions of the statements not being voluntary are not acceptable as there is no shred of evidence put forth that point towards coercion.

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. 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 is liable to penalty.

9.1 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 herein. 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. 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*.

9.2 In view of the above, the contention of the Applicant that the impugned gold items are not 'prohibited goods', cannot be accepted.


10. 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."* 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."* 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. In view of the facts of the case the penalty imposed is just and fair.

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

  
22/3/24  
(Shubhagata Kumar)

Additional Secretary to the Government of India

Sh. Udayakumar Poolam Chalil  
S/o Sh. Choyi Poolam Chalil  
Navodayam, Post Chirakkara  
Thalassery, Kannur  
Kerala-670104.

Order No. 83/24-Cus dated 22-03-2024

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3<sup>rd</sup> floor, New Custom House, GST Road, Meenambakkam, Chennai – 600016
2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600027
3. Sh. S. Palanikumar, Kameshwaran & P. Kamala Malar, Advocates, No. 10, Sunkurama Street, 2<sup>nd</sup> Floor, Chennai-600001.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy
7. Notice Board

ATTESTED

  
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