

SPEED POST



F. No. 373/271/B/SZ/2020-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.....03/02/2025

Order No. 13 /25-Cus dated 03/02/2025 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. 75/2020-TRY (CUS) dated 02.11.2020, passed by the Commissioner of GST & Central Excise (Appeals), Tiruchirappalli.

Applicant : Smt. Kavitha, Tanjore, Tamilnadu.

Respondent : The Commissioner of Customs (P), Tiruchirappalli.

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ORDER

A Revision Application No. 373/271/B/SZ/2020-RA dated 14.12.2020, has been filed by Smt. Kavitha, Tanjore (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 75/2020-TRY (CUS) dated 02.11.2020, passed by the Commissioner of GST & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has rejected the appeal filed by the Applicant herein against the Order-in-Original passed by the Assistant Commissioner of Customs (Airport), Tiruchirappalli, bearing no. 296/2019 dated 23.09.2019 vide which five unfinished gold chains of 24 Carat purity totally weighing 174.700 grams valued at Rs. 5,52,576/- recovered from the Applicant, had been absolutely confiscated under Section 111(d), 111(i), 111(l) & 111(m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1992. Besides, a penalty of Rs. 55,000/- was also imposed on the Applicant, under Section 112(a), 112(b) of the Act, *ibid*.

2. Brief facts of the case are that, the Applicant an Indian passport holder who arrived by Air India Express flight from Singapore was intercepted by the officers of AIU, Airport, Tiruchirappalli on 19.04.2019 while she was attempting to cross the green channel. The officers asked the applicant whether she had brought gold in any form with her, either in her person or in her baggage to which, she replied in the negative. Not satisfied with her reply, the Customs officers conducted search with the help of a lady officer and found that the applicant had concealed a polythene packet wrapped in white colour polythene tape in her innerwear. On opening of the above polythene packet, five unfinished gold chains totally weighing 174.70 grams were recovered from her. The Govt. approved assayer tested and appraised the impugned gold and found it to be of 24 carat purity totally weighing 174.700 gms and valued at Rs.5,52,576/-. On the reasonable belief that the impugned gold was brought in contravention of the Customs Act, 1962, the officers seized them under Section 110(1) of the Customs Act, 1962. The Applicant in her voluntary statement dated 19.04.2019 recorded under Section 108 of the Customs Act, 1962 has contended that while she was waiting for boarding flight to India, one unknown person approached her to carry gold items and asked her to be handed over to his accomplice waiting outside Trichy Airport for which he assured to give her a commission of Rs.5,000/-; that the seized gold did not belong to her; that she did not possess any valid license/permit for legal import of gold into India and she did not possess foreign currency for payment of

Customs duty on the impugned gold; that she did not declare the gold to the Customs officers; that she carried the gold for monetary consideration and that she did not file any customs declaration form. The applicant admitted her offence and pleaded her guilt. The matter was adjudicated vide the aforementioned Order-in Original No. 296/2019 dated 23.09.2019. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals), which was rejected.

3. The instant revision application has been filed, mainly, on the grounds that order of the Commissioner (Appeal) is wrong, contrary to law and facts of the case, partial, fallacious and unjustifiable; that the applicant is eligible to import gold and gold jewellery since she is a non-resident Indian working in Singapore; that the applicant verbally declared to the Customs officers that she was carrying her personal jewellery; that she kept gold chains inside her innerwear for safety purpose and they were not kept concealed; that ownership of the goods is not disputed and there is no ingenious concealment; that the import of gold and gold ornament is dutiable and not prohibited; and that, therefore, the Order-in-Appeal may be set aside and the order of adjudicating authority of absolute confiscation and penalty may be set aside and Applicant may be permitted to re-export the gold and the penalty may be set aside/reduced.

4. Personal hearings in the matter were fixed on 18.11.2024. Sh. A. Selvaraj, the authorized representative of the Applicant appeared for personal hearing and submitted that the applicant's husband works as a driver in Singapore and that she is herself an educated person, having done her Masters'. The impugned gold was gifted to her by her husband though there is no purchase invoice for the same. He stated that her statement was not voluntary, that gold jewellery was worn on her person, that gold not being a prohibited item, the option for redemption fine is mandatory. Even though the crude chain was of 24 carat gold, it is nevertheless a chain and should be allowed for redemption or re-export. No one appeared for respondent's side in the hearing, so next personal hearing was fixed on 09.12.2024. Sh. S. Sivakumar, Superintendent Customs (Legal), Tiruchirappalli appeared for the respondents and submitted that the applicant brought five unfinished crude chains of 24 carat gold ingeniously concealed in her innerwear, making it a case of smuggling with an intent to evade duty. The OIA is proper and should be upheld.

5.1 The Government has examined the matter. The applicant has attempted to smuggle five nos. of unfinished gold chains of 24 carat purity which were ingeniously concealed inside her innerwear. She did not declare the impugned gold items to the Customs officers as required under Section 77 of the Customs Act, 1962. When she was questioned, she denied possession of the same and the gold chains were discovered only during search by Customs officers. It is also on record that she did not possess any valid document/license/permit for legal import of gold into India and that she was aware that bringing gold into India by way of concealment and without payment of duty is an offence. She has admitted in her own statement under Section 108 of the Customs Act, 1962 that the impugned gold items did not belong to her. The relevant sequence of events has been recorded in the Mahazar, which also substantiates the acts of Applicant in an attempt to smuggle the confiscated goods. She has not retracted her statement. In the present case, the Applicant has admitted to her involvement in smuggling due to the lure of earning easy money with full awareness that this is illegal and an offence. The admissions made are corroborated by other material on record, as discussed hereinabove. Thus, there is no evidence on record to establish that the Applicant was the legitimate owner of the impugned gold. The intent to smuggle is established.

5.2 In terms of Notification No. 12/2012-Cus 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. It is noticed that the Applicant was a short visit passenger and had not stayed abroad for more than 6 months. Also, the duty is payable in convertible foreign currency and no foreign currency was found on the Applicant. As per proviso to condition 35, the Applicant was also required to make a declaration of dutiable goods in this regard, which has also not been done in this case. Hence, the contention of the Applicant that

she was an eligible passenger to avail benefit of the said notification is devoid of merit.

5.3 As per rule 3(b) of the Baggage Rules, 2016 read with Annexure-I, gold or silver ornaments only upto a value of Rs. 50,000/- (Rupees Fifty Thousand only) can be imported if carried on the person or in the accompanied baggage of the passenger. In this case, although the imported gold was in jewellery form and was carried on the person, it was of a much higher value than the prescribed limit i.e Rs.50,000/- and was not declared to customs. It is also on record that the Applicant in this case was not an eligible passenger for exemption as per rules. Further, it was incumbent on the part of the Respondent to have made a proper declaration under Section 77 of the Customs Act, 1962. Moreover, it is also on record that she did not have any convertible foreign currency for paying customs duty for the said gold.

5.4 The Government also finds that the applicant was well aware that the goods had to the Customs and that non-declaration of dutiable goods is an offence under the Customs Act, 1962 and Rules & Regulations made thereunder. The Applicant attempted to smuggle the impugned gold by deliberately not declaring the same upon arrival, with the willful intent to evade Customs duty. Further, it is seen that the statement of the Applicant reveals that she was a carrier and has attempted to smuggle the impugned gold for monetary benefit. Therefore, the Applicant has committed an offence of the nature described in Section 112(a) and 112(b) of Customs Act, 1962 making her liable for penalty under both these provisions.

5.5 Bringing into India goods which contravene the provisions of the Customs Act and omitting to declare the same under Sections 77 of the Customs Act, 1962 are clearly covered under "*does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act*". Carrying/smuggling goods in an ingeniously concealed manner is clearly covered under Sections 112(b) of the Customs Act, 1962.

6. 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*. On examination of her passport travel document viz Indian Passport, it was seen that the passenger had travelled frequently and she had not stayed abroad for more than 6 months before commencement of her journey. In terms of Notification No.50/2017-Cus dated 30.06.2017, the applicant did not fulfill the condition to import gold jewellery. 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 observes that the finding of the Original Authority that seized gold item was liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant is correct.

7.1 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. The Hon'ble Supreme Court has repeatedly held that if conditions for import of goods are not fulfilled, they 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, the goods seized in the present case have to be treated as 'prohibited goods', within the meaning assigned to it under Section 2(33) of the Act, *ibid*.

7.2 In view of the above, the contention of the Applicant that the impugned gold item was not 'prohibited goods', cannot be accepted.

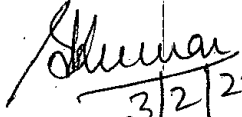
8. The Government observes that the original authority had denied the release of seized gold items on payment of redemption fine under Section 125 of Customs Act, 1962. It is settled by the judgment of the Hon'ble Supreme Court in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, 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."* 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, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

9. 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.

10. The case laws relied upon by the Applicant, in support of her various contentions do not come to her rescue in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts, as above.

11. In the facts and circumstances of the case, the penalty imposed by the original authority, as upheld by the Commissioner (Appeals), is neither harsh nor excessive.
12. The revision application is, accordingly, rejected.


3/2/2025
(Shubhagata Kumar)

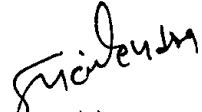
Additional Secretary to the Government of India

Smt. Kavitha
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Order No. 13 /25-Cus dated 03/02/2025

Copy to:

1. The Commissioner of GST & Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli-620001.
2. The Commissioner of Customs (P), No. 1, Williams Road, Cantonment, Tiruchirapalli-620001.
3. Sh. A. Selvaraj, Superintendent of Customs (Retd.), 68, Krishnamurthynagar, Tiruchirappalli-620021.
4. PPS to AS(RA).
5. Guard File.
- ✓ 6. Spare Copy.
7. Notice Board.


ATTESTED (शैलेंद्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
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