

SPEED POST



F. No. 373/267/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.....07/02/2025

Order No. 16 /25-Cus dated 07/02/2025 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.TCP-CUS-000-APP-081-20 dated 24.11.2020, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli.

Applicant : Shri Sures Muthtamil, Malaysia.

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

ORDER

A Revision Application No. 373/267/B/SZ/2020-RA dated 07.12.2020 has been filed by Shri Sures Muththamil, Malaysia (hereinafter referred to as the Applicant) against the Order-in-Appeal No.TCP-CUS-000-APP-081-20 dated 24.11.2020, passed by the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli. The Commissioner (Appeals) has rejected the appeal filed by the Applicant against the Order-in-Original No. 307/2019 dated 11.10.2019, passed by the Assistant Commissioner of Customs, Customs Airport, Tiruchirappalli vide which two gold chains and one gold bracelet of 22 carat purity, weighing 208.00 grams, valued at Rs. 6,46,464/-, recovered from the Applicant, were confiscated absolutely under Section 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade(Development & Regulation) Act, 1992 and a penalty of Rs. 65,000/- was also imposed on the Applicant under Section 112 (a) and 112(b) of the Act, *ibid*.

2. Brief facts of the case are that, the Applicant, a Malaysian passport holder, arrived from Kuala Lumpur on 12.12.2018, at Tiruchirappalli Airport. He was intercepted by the officers of AIU, Airport, Tiruchirappalli when he was crossing the green channel in a suspicious manner. The AIU officers verified with the Customs baggage officers and found that the Applicant had neither filed a Customs declaration form nor declared any dutiable items. When the officers asked him whether he had brought any valuables or gold in any form with him either in person or in his baggage, he replied in the negative. Not satisfied with his reply, the officers conducted a search of his person with his consent and recovered two chains and one bracelet worn by him which was concealed under a close round neck T-Shirt. A government approved appraiser tested and appraised the said two chains and one bracelet in presence of the Applicant and two witnesses recorded in the Mahazar and certified that the two gold chains and bracelet were of 22 carat purity; weighing 160 grams, valued at Rs. 4,97,280/- and the gold bracelet weighing 48 grams, valued at Rs. 1,49,184/-. Thus, a total of 208 grams of gold of 22 carat purity collectively valued at Rs. 6,46,464/- were recovered from the Applicant. On the reasonable belief that the gold items were attempted to be smuggled into India without any valid import license/ document in violation of the provisions of the Customs Act, 1962, the officers seized the

same under a Mahazar under Section 110 of the Customs Act, 1962 for taking further action in the matter.

3. In his voluntary statement dated 05.03.2019 recorded under Section 108 of the Customs Act, 1962, the Applicant stated inter-alia that the impugned gold items were not owned by him; that the same were given to him by an unknown person outside the Kuala Lumpur Airport with a request to hand over the same to his accomplice in Tiruchirappalli for which the unknown person promised a commission of Rs. 3,000/-; that he did not have any valid license/permit/document to legally import gold into India and that he did not possess foreign currency for payment of Customs duty. He stated that the unknown person did not give any money for payment of Customs duty. He admitted that he brought the impugned gold items by concealment, tried to clear the same without payment of Customs duty and accepted his offence. After due process of law, the adjudicating authority adjudicated the matter vide above said Order-in-Original No. 307/2019 dated 11.10.2019. Aggrieved, the Applicant filed an appeal before the Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, which has been rejected. Aggrieved by O-I-A, the Applicant filed this revision application.

4. The above revision applications have been filed mainly on the grounds that order of adjudicating authority is against law, weight of evidence and circumstances and probabilities of the case; no declaration card was provided either by the Customs authority or by any other authority and hence question of filling up the declaration card does not arise; he was all along at the red channel at the arrival hall of airport; ownership of gold is not disputed and there is no ingenious concealment and gold jewellery are not commercial quantity and he purchased in Malaysia out of his own earning for own use; gold is not prohibited goods but restricted; option ought to have been given for the release of impugned gold under Section 125 of the Customs Act, 1962 on payment of redemption fine. The prayer is to set aside the impugned order, to permit the Applicant to re-export or release the gold and also to set aside/ reduce the penalty.

5. Personal hearings in the matter were fixed on 16.10.2024 and 25.10.2024 but no one appeared. On behalf of the Applicant, Smt. P. Kamalamalar, Advocate, appeared on 25.11.2024 and submitted that the Applicant is a Malaysian national and wore a 22 carat chain and bracelet. There was no concealment and the gold was declared to Customs. She quoted the Vigneswaran Sethuraman judgement and prayed for the re-export or release

of the gold. Sh. Sivakumar, Superintendent, Customs appeared on behalf of Respondent department and stated that the Applicant in his statement has admitted to the act of smuggling and this statement is not retracted. The O-I-A is proper and should be upheld.

6.1 The Government has examined the matter. The Applicant did not declare the gold to Customs. As per his statement under Section 108 of the Customs Act, 1962, the impugned gold did not belong to him and he was not in possession of valid documents for the licit import of gold nor was he carrying convertible foreign currency to pay Customs duty. He was not eligible to import impugned gold in terms of Notification No. 50/2017-Cus dated 30.06.2017. It is also on record that the Applicant upon being questioned about possession of gold/gold jewellery, denied the same. The gold though worn on the person which was concealed under a close round neck T-shirt i.e. not visible to the eye. Had he not been intercepted and searched he would have walked out without paying the applicable duty in violation of Customs Act, 1962. Instead of making a truthful declaration as required under Section 77 of the Customs Act, 1962, the Applicant brought the impugned gold in a concealed manner to evade duty and would have walked out undetected but for the detection by Customs.

6.2 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**)".*

6.3 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 a close round neck T-Shirt 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 him 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.

6.4 Further, the relevant sequence of events has been recorded in the Mahazar which substantiates the acts of Applicant in an attempt to smuggle the confiscated goods. In his own statement recorded under Section 108 of the Customs Act, 1962, he has admitted that the impugned gold did not belong to him and he smuggled the same due to lure of money. The *Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs. U.O.I {1997 (89) ELT 646 (SC)}*, has 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. Also, there is nothing on record and no evidence to suggest that the Applicant was coerced into making the statement under section 108 or to establish licit ownership of the impugned goods. Therefore, there is no doubt that the statement tendered was voluntary. As such, it is evident that the contention that the impugned gold items did not belong to the Applicant appears to be an afterthought.

6.5 As far as the case of Vigneswaran Sethuraman Vs Union of India {2014(308) E.L.T 394 (ker.)} cited by the advocate is concerned, it is observed that the said judgement relates to Baggage Rules, 1998 whereas the instant case relates to Baggage Rules, 2016. It is observed in case of Vigneswaran Sethuraman Vs Union of India {2014(308) E.L.T 394 (ker.)} that a foreign national had worn a gold chain which was not concealed as it was in the instant case. The adjudicating authority in para (20) of the impugned O-I-O, has discussed it in detail and pointed out the concealment and non-declaration of the impugned gold items brought by the Applicant. Also, the seized gold did not belong to Applicant as admitted by him in his statement. In the present case, the Applicant has admitted his involvement in smuggling by concealment and the same has not been retracted.

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 Customs Act, 1962. No documents evidencing ownership and 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 items were liable to confiscation under Section 111 *ibid* and that the penalty was imposable on the Applicant.

8.1 The Applicant has contended that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is against several judgements of the Hon'ble Supreme Court in which 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 fulfilment of certain conditions. In the present case, as correctly brought out by the lower authorities, the Applicant in this case did not fulfil 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."

8.2 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----"

8.3 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 of assigned to it under Section 2(33) of the Act, *ibid.*

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

9. 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 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"*. Further, the Division Bench of Hon'ble Madras High Court in the decision reported in 2009(247) E.L.T. 21 (Mad) (*Commissioner of Customs Vs. Samynathan Murugesan*) which held that if the manner of Import of Gold is by ingenious concealment and patently fraudulent, then, the adjudicating authority may direct absolute confiscation of the goods instead of exercising his discretion under Section 125 of the Act. Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

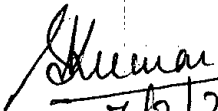
10.1 As regards the prayer for permitting re-export of the offending goods, the Government observes that a specific provision regarding re-export of articles imported in baggage is made in Chapter-XI of the Customs Act, 1962, by way of Section 80. On a plain reading of Section 80, it is apparent that a declaration under Section 77 is a pre-requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of *Deepak Bajaj vs Commissioner of Customs (P), Lucknow*{2019(365) ELT 695(All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export under Section 80 of the Act, *ibid*. In this case, the Applicant had not made a true declaration under Section 77.

10.2 Further, the Hon'ble Delhi High Court has, in the case of *Jasvir Kaur vs. UOI* {2009 (241) ELT 621 (Del.)}, held that re-export is not permissible when article is recovered from the passenger while attempting to smuggle it. Hence, the question of allowing re-export does not arise.

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

12. In the facts and circumstances of the case, the Government finds that the order for absolute confiscation of the impugned goods by the original authority need not required any interference. However, the penalty imposed on the Applicant under Section 112 (a) and 112(b) reduces to Rs. 30,000/-.

13. The revision application is disposed of on the above terms.


7/2/2025

(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Sures Muththamil,
S/o Shri Muththamil,
No. 19, Lorong Katarria 3,
Klang, Malaysia.

Order No. 16 /25-Cus dated 07/02/2025

Copy to:

1. The Commissioner of GST, Service Tax & Central Excise (Appeals), Tiruchirappalli, No. 1, Williams Road, Cantonment, Tiruchirappalli-620001.
2. The Commissioner of Customs (Preventive), No.1, Williams Road, Cantonment, Tiruchirappalli-620001.
3. Sh. S. Palanikumar, Kameshwaran & P. Kamalamalar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600001.
4. PPS to AS(RA).
5. Guard file.
- ✓ 6. Spare Copy.
7. Notice Board.

Shailendra

ATTESTED

(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार, Govt. of India
नई दिल्ली New Delhi