

**SPEED POST**



F.No. 373/274/B/SZ/2020-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..18/02/25

Order No. 19/25-Cus dated 18-02-2025 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 under Section 129 DD of the Customs Act, 1962, against the Order-in-Appeal No.HYD-CUS-000-APP-028-20-21(APP-I) dated 19.08.2020, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad.

Applicant : Mrs. Dilshad Khan, Hyderabad.

Respondent : The Principal Commissioner of Customs, Hyderabad.

**ORDER**

A Revision Application No. 373/274/B/SZ/2020-RA dated 21.12.2020 has been filed by Mrs. Dilshad Khan, Hyderabad (hereinafter referred to as the Applicant/passenger), against the Order-in-Appeal No. HYD-CUS-000-APP-028-20-21 dated 19.08.2020, passed by the Commissioner of Customs & Central Tax (Appeals-I), Hyderabad. The Commissioner (Appeals) has modified the Order-in-Original of the Additional Commissioner of Customs, Hyderabad, bearing No. 17/2020-Adjn.Cus(ADC) dated 20.02.2020, to the extent of reducing the penalty imposed on the Applicant to Rs. 3,00,000/- under Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962.

2. The Adjudicating Authority vide the aforementioned Order-in-Original, ordered for absolute confiscation of gold chain totally weighing 799.980 grams and valued at Rs. 27,90,330/-, recovered from the Applicant, under Section 111(d), 111(i), 111(j), 111(l), 111(m) and 111(o) of the Customs Act, 1962. Besides, a penalty of Rs. 5,60,000/- under Section 112(a)(i) and 112(b)(i) of the Act, *ibid* was also imposed on the Applicant.

3. Brief facts of the case are that, the Applicant arrived, on 28.07.2019, at Hyderabad from Dubai by flight No. AI952. She was intercepted by the officers of Customs, Air Intelligence Unit (AIU) after she had opted to walk through the green channel, on reasonable belief that she was carrying goods in violation of Customs Act, 1962. Applicant had neither filed a Customs declaration form nor declared any dutiable items. When the officers asked her whether she had brought any valuables or gold in any form with her either in person or in her baggage, she replied in the negative. Not satisfied with her reply, the officers conducted a search of her person alongwith her baggage with her consent. The Applicant was carrying two pieces of hand baggage and two checked-in bags. When the hand baggage and checked-in baggage of the Applicant were subjected to screening on X-ray machine, nothing suspicious was observed. Thereafter, the officers took the passenger to the Door Frame Metal Detector (DFMD) in the International Passenger Arrival Hall and made her pass through the DFMD and the officers noticed the DFMD was giving continuous beep sound indicating presence of metal items on her body. Thereafter, the officers checked the passenger by Hand Held Metal Detector (HHMD) and found beep sound coming from the upper part of her body. Lady officers of Customs AIU

conducted frisking in the closed door room of AIU and identified yellow metal rings chain with three pendants concealed on her body. The Government Approved Valuer for jewellery, on assaying the yellow metal rings chain with three pendants, certified it as 999 (24 carat purity) totally weighing 799.980 grams. The assayer certified total value of the gold as Rs. 27,90,330/-. The Applicant stated that her aunt Mrs. Marriam Al Shamsi who was residing in Dubai had given the gold chain with pendants to hand over the same to her uncle Mr. Mohammad Ali residing at Tolichowki, Hyderabad. Thereafter, the officers of Customs seized the impugned gold under Panchanama dated 28.07.2019 on a reasonable belief that the gold was smuggled by the Applicant by concealing the same on her body with an intention to evade payment of Customs duties payable thereon and the same was liable to confiscation under the provisions of Customs Act, 1962. Subsequently, statement dated 28.07.2019 of the Applicant was recorded under Section 108 of the Customs Act, 1962. The Applicant was issued a Show Cause Notice on 25.11.2019 requiring her to show cause to the adjudicating authority as to why impugned gold should not be confiscated in terms of Section 111(d), 111(i), 111(j), 111(l), 111(m) and 111(o) of the Customs Act, 1962 and why penalty should not be imposed on her under Section 112 of the Act, *ibid*.

4. After due process of law, the Adjudicating Authority adjudicated the matter vide aforementioned O-I-O No. 17/2020-Adjn.Cus(ADC) dated 20.02.2020. Aggrieved, the Applicant filed appeal before the Commissioner (Appeals), who has modified the order of original authority to the extent of reducing the penalty from Rs. 5,60,000/- to Rs. 3,00,000/- under Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962. Aggrieved by O-I-A, the Applicant filed this revision application.

5. The instant revision application has been filed mainly on the grounds that gold is not a prohibited item; that option of redemption in lieu of confiscation of the impugned goods may be given; that imposition of penalty of Rs. 3,00,000/- on the Applicant is harsh and disproportionate and requested to take a lenient view and consider moderation of penalty. The prayer is to set the order issued by the adjudicating authority or pass any other order as deemed fit.

6. Personal hearings in the matter were fixed on 18.11.2024 and 09.12.2024. But, no one appeared either from the Applicant's side or from the Respondent's side. Also, no

request for adjournment has been received from either side. Therefore, it is presumed that they have nothing to state in the matter. Since, sufficient opportunity has been granted, the matter is taken up for decision based on the available records.

7. At the outset, it is observed that the impugned Order-in-Appeal dated 19.08.2020 was received by the Applicant on 02.09.2020 as admitted by her and the instant revision application has been filed on 21.12.2020 with a delay of around 21 days beyond the normal period of limitation. In view of the COVID pandemic, the Hon'ble Supreme Court, vide Order dated 23.03.2020, in SMW(C) No. 3/2020 and order dated 08.03.2021 had extended the period of limitation prescribed under general law of limitation or under any special laws w.e.f. 15.03.2020, until 28.02.2022. Therefore, the delay is condoned.

8.1 The Government has examined the matter. The Applicant has attempted to smuggle into India a gold rings chain with three pendants, of 24 carat purity worth Rs. 27.90 lakhs without making a true declaration to the Customs Authority, as required under Section 77 of the Customs Act, 1962. The Applicant would have exited undetected without payment of Customs dues but for the interception by Customs. The Applicant has admitted in her voluntary statement that the impugned gold items did not belong to her and were given to her by her aunt in Dubai with instructions to hand over the same to her uncle residing at Tolichowki, Hyderabad. She was also not in possession of any valid documents for the legal import of impugned gold into India. As per her own statement to Customs she is a Mehendi artist who travels frequently in the course of her work. Thus, it is clear that this has been done with full awareness and with an intent to evade Customs duty.

8.2 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*. Further, the Applicant was intercepted after passing through the Green Channel. 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 her, in terms of Section 123, *ibid*. Keeping in view the facts of the case, the Government agrees with the lower authorities that the seized goods were liable to confiscation under Section 111 *ibid* and the Applicant was liable to penalty.

9.1 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 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."*

9.2 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----."*

9.3 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.*

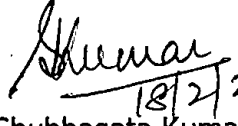
9.4 In view of the above, the contention of the Applicant that the offending goods are not 'prohibited goods', cannot be accepted.

10. 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"*. Therefore, keeping in view the judicial pronouncements above, the Commissioner (Appeals) has correctly refused to interfere with the discretion exercised by the original authority.

11. The decisions relied upon by the Applicant, do not come to the rescue of the Applicant's case in view of the dictum of Hon'ble Supreme Court and Hon'ble High Courts and discussions as above.

12. In view of the facts and circumstances of the case, there is no ground to interfere with order of Commissioner (Appeals). The Appellate Authority after due consideration has already reduced the penalty imposed on the Applicant from Rs. 5,60,000/- to Rs. 3,00,000/- under Section 112(a)(i) and 112(b)(i) of the Customs Act, 1962. In the facts and circumstances of the case, no further relief is merited.

13. The revision application is rejected for the reasons aforesaid.

  
18/2/2025  
(Shubhagata Kumar)

Additional Secretary to the Government of India

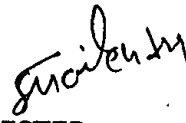
Mrs. Dilshad Khan,  
D/o Shri Ahsan Ali Khan,  
H.No.23-2-64, Near Asra Hospital,  
Mogulpura, Hyderabad – 500 002.

Order No. 19 /25-Cus dated 18-02-2025

Copy to:

1. The Commissioner of Customs & Central Tax (Appeals-I), 7<sup>th</sup> Floor, GST Bhavan, L.B Stadium Road, Basheerbagh, Hyderabad-500004.
2. The Principal Commissioner of Customs, GST Bhavan, L.B Stadium Road, Hyderabad-500004.
3. PPS to AS (RA).
4. Guard file.
- ✓ 5. Spare Copy.
6. Notice Board.

ATTESTED

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