

SPEED POST



F. No. 380/61/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.....28/03/25.

Order No. 37/25-Cus dated 28-03-2025 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 Airport.Cus-I No. 225/2020
dated 18.09.2020, passed by the Commissioner of Customs
(Appeals-I), Chennai.

Applicant : The Principal Commissioner of Customs, Chennai-I.

Respondent : Sh. Rajalingam Mahinthan, France.

ORDER

A Revision Application No. 380/61/B/SZ/2020-RA dated 21.12.2020 has been filed by the Pr. Commissioner of Customs, Chennai-I (hereinafter referred to as the Applicant department) against the Order-in-Appeal Airport.C.Cus-I No. 225/2020 dated 18.09.2020, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No.436/2019-20 Commissionerate-I dated 09.03.2020 passed by the Joint Commissioner of Customs, Adjudication-AIR, Chennai in the case of Sh. Rajalingam Mahinthan, France, (hereinafter referred to as the Respondent) and allowed redemption of absolutely confiscated goods seized from the respondent on payment of fine of Rs.10,00,000/-. However, the penalty of Rs.6,00,000/- imposed under Section 112(a) on the respondent was upheld.

2. Brief facts of the case are that, the respondent, a French passport holder who arrived from Paris to Chennai was intercepted by the officers of AIU, Airport, Chennai on 06.04.2019 at the exit point of arrival hall of Anna International Airport, Chennai on a reasonable belief that he might be carrying goods in violation of the provisions of the Customs Act, 1962. During the search of his checked in baggage, the Customs officers recovered four silver coated Lord Ganesha idols kept among his personal effects. On examination, the Govt. approved gold appraiser certified them to be gold of 12 carat purity totally weighing 3985 grams valued at Rs.65,19,460/-. As the respondent attempted to smuggle the impugned gold by concealing and not declaring it to the Customs at Chennai Airport and as he was not an eligible passenger to bring gold into India, the impugned gold was seized under Section 110 of the Customs Act, 1962 read with FT(DR) Act, 1992, under a Mahazar dated 06.04.2019. The respondent in his voluntary statement dated 06.04.2019 recorded under Section 108 of the Customs Act, 1962 stated that the seized gold was given to him by Sh. Raja alias Vinayakamurthy to hand it over to Manikandan stores, Chepauk to remake Vinayak idols into Gods and Goddess statues for a new temple being built at Paris. Further, in his statement 09.04.2019, he has accepted that the impugned gold idols did not belong to him and he would not claim ownership in future. The original authority has ordered for absolute

confiscation of the seized gold idols under Sections 111(d), 111(i) and 111(l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992. A penalty of Rs. 6,00,000/- was also imposed, under Section 112(a) of the Act, *ibid* on the Respondent herein, who, aggrieved by the order filed an appeal against the same. While disposing off the appeal filed by the party, the Commissioner (Appeals) vide his order C.Cus-I No.225/2020 dated 18.09.2020 modified the order-in-original and allowed re-export of the confiscated gold idols on a redemption fine of Rs. 10,00,000/- under Section 125 of the Customs Act, *ibid*. Aggrieved, the Applicant department filed an appeal before the revisionary authority.

3. The revision application has been filed, mainly, on the grounds that the Respondent did not declare the impugned gold idols as required under Section 77 of the Customs Act, 1962; that the respondent being a French National is not eligible to bring gold as per Notification 12/2012-Customs dated 17.03.2012 as amended and Notification No. 50/2017-Customs dated 30.06.2017; that he attempted to smuggle the gold idols of silver colour coated concealed in a polythene package which were kept inside the checked-in-baggage among his personal effects to avoid detection by the Customs and evade duty; re-export of gold is covered under Section 80 of the Customs Act, 1962 and he was not eligible to re-export the impugned gold. Hence, the lower authority's order to allow the re-export of the gold is erroneous.

4. Personal hearing in the matter was held on 08.01.2025. Shri P.K. Saravanan, Deputy Commissioner appeared for the applicant department and submitted that the respondent brought silver coated Ganesha idols made of gold, which amounts to camouflage, and thus ingenious concealment. These idols are not jewellery and the appellate authority wrongly allowed re-export relying on the case of Vigneshwaran Sethuraman which pertains to old Baggage Rules. The respondent in his own statement has admitted that someone else gave these to him and he was acting as a carrier. Smt. Palanikumar Kamalamalar, Advocate on behalf of the respondents sought to make additional written submissions. Sh. Saravanan, reiterated the grounds of R.A and his additional written submissions.

5.1 The Government has examined the matter. It is a fact on record that the impugned gold idols silver colour coated were concealed inside his checked-in-baggage and that the Respondent did not declare the gold brought by him, as required under Section 77 of the Customs Act, 1962, to the Customs at the airport. In his statement tendered under Section 108 of the Customs Act, 1962, the respondent has admitted to the recovery of the gold from his checked-in-baggage, to not having declared the goods as required as well as to the fact that he is not the owner of the goods but acted as a carrier. Commissioner (Appeals) has therefore rightly held the goods to be liable for confiscation.

5.2 As far as the case of Vigneswaran Sethuraman cited by the advocate is concerned, it is observed that the said judgement relates to Baggage Rules, 1998 and the instant case relates to Baggage Rules, 2016. Also, in the case of Vigneswaran Sethuraman Vs Union of India [2014(308) E.L.T 394(ker.)], a foreign national had worn a gold chain which was not concealed, whereas in the instant case the respondent brought silver coated gold idols concealed in his checked in baggage and has admitted to having acted as carrier in his own statement under Section 108 of the Customs Act, 1962. It is on record that the respondent has not retracted his statement. The Government observes that seizure of the impugned gold was effected under a Mahazar in presence of independent witnesses which supports that the respondent has attempted to smuggle the impugned gold via ingenious concealment and has not considered the violation of Section 77 of Customs Act, 1962. The facts of the case law quoted above are different and clearly distinguishable from the case at hand. Thus, the goods brought by the respondent cannot be considered as bonafide baggage. Therefore, the Government holds that the absolute confiscation ordered by the original authority was in order.

5.3 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 respondent did not declare the gold items, as stipulated under Section 77 of the Act, *ibid*. The respondent 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 respondent has failed to discharge the onus placed on him in terms of Section 123, the Government concurs with the original authority that the impugned gold items were liable to confiscation under Section 111 *ibid* and that the respondent was liable for penalty. The only question therefore remains whether the option of redemption given vide the Order-in-Original is proper or not.

5.4 The Government observes that import of gold and articles thereof in baggage is allowed subject to fulfilment of certain conditions. In the present case, the stipulated conditions have not been fulfilled by the respondent. The 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*.

5.5 The Government observes that the option to release seized goods on redemption fine, in terms of the provisions of Section 125 of the Customs Act, 1962, in respect of "prohibited goods", is discretionary. The Hon'ble Supreme Court has affirmed this position in the case of Garg Woollen Mills (P) Ltd vs. Additional Collector of Customs, New Delhi [1998 (104) E.L.T. 306 (S.C.)]. In the case of UOI & Ors vs. M/s Raj Grow Impex LLP & Ors (*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; and has to be based on the relevant considerations". Further, the Hon'ble Madras High Court has, in the case of Commissioner of Customs (Air), Chennai-I vs. P. Sinnasamy {2016 (344) ELT 1154 (Mad.)}, held that *"when discretion is exercised under Section 125 ----- 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)], relying upon the judgment of Apex Court in Mangalam Organics Ltd. [2017 (349) ELT 369 (SC)], 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."* In the present case, the original authority has, after detailed consideration refused redemption. Therefore, the discretion exercised by the original authority could have been interfered with, only if it suffered from any of the vices indicated by the Hon'ble Courts, as above. No such case has been made out in the instant case. Rather, Commissioner (Appeals) has in his own findings as discussed in Para (8) of the Order-in-Appeal, the Respondent's averments regarding forceful and coercive recording of the statement by the customs officers have to be considered as an afterthought as he has attempted to smuggle the impugned gold idols by not declaring it to the customs and he was not in possession of any documents evidencing legal acquisition/ownership of the gold. Therefore, the impugned gold idols were rightly confiscated and penalty imposed on the respondent.

6. 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 {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 Commissioner (Appeals) has recorded that the Respondent had made no declaration in respect of the subject goods. The gold was ingeniously camouflaged. 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 her luck and smuggle Gold into the country and if caught he should be given permission to re-export."

7. Hence, following the ratio of decisions cited supra, Government holds that the order of Commissioner (appeals) allowing redemption of the confiscated gold cannot be sustained.

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

9. In view of the above, impugned OIA dated 18.09.2020 is set aside and the OIO dated 09.03.2020 is restored.

10. The revision application is allowed in above terms.

Shubhagata Kumar
28/3/2025
(Shubhagata Kumar)

Additional Secretary to the Government of India

The Pr. Commissioner of Customs
Chennai-I Commissionerate, New Customs House
Meenambakkam, Chennai-600027.

Order No. 37/25-Cus dated 28-03-2025

Copy to:

1. Sh. Rajalingam Mahinthan S/o Sh. Rajalingam, No.189, Abenue Henri Ginous, 92120 Montrouge, France.
2. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3rd Floor, New Custom House, GST Road, Meenambakkam, Chennai-600016.
3. Smt. Kamalamalar Palanikumar, Advocate, No. 10, Second Floor, Sunkurama Street, Chennai-600001.
4. PPS to AS(RA).
5. Guard File.
6. Spare Copy.
7. Notice Board.

ATTESTED

Shailendra Kumar Meena
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
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