

SPEED POST



F.No. 373/48/B/SZ/2021-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..17/04/25

Order No. 45 /25-Cus dated 17-04-2025 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 Airport. C. Cus. I. No. 16/2021 dated 18.01.2021, passed by the Commissioner of Customs (Appeals-I), Chennai.

Applicant : Shri Muthuramalingam, Chennai

Respondent : The Principal Commissioner of Customs, Chennai-I

ORDER

A Revision Application No. 373/48/B/SZ/2021-RA dated 22.02.2021 has been filed by Shri Muthuramalingam, Chennai (hereinafter referred to as the Applicant/passenger/pax) against the Order-in-Appeal Airport. C. Cus. I. No. 16/2021 dated 18.01.2021, passed by the Commissioner of Customs (Appeals-I), Chennai. The Commissioner (Appeals) has rejected the appeal filed by the Applicant and upheld the Order-in-Original No. 219/2020-21-Commissionerate-1 dated 28.10.2020 passed by the Assistant Commissioner of Customs (Adjudication-AIR), Chennai Airport and Air Cargo Complex, Chennai-I.

2. Brief facts of the case are that, the Applicant, an Indian passport holder, who arrived into India by Thai Airways flight (TG-337) on 27.12.2019 at Anna International Terminal of Chennai Airport, Meenambakkam, Chennai from Bangkok, was intercepted by Customs officers at the exit of the arrival hall of the Airport on a reasonable suspicion that he might be carrying gold/contraband goods either in his baggage or on his person. On persistent questioning in the presence of witnesses, the passenger accepted the concealment of gold in the hollow pipes of the trolley used for carrying the checked-in luggage. Subsequently, 5 bundles wrapped with black colour adhesive tape were recovered from the hollow pipes of the trolley. On cutting open the bundles, 5 nos. of gold cut bits of 24 carat purity weighing 147 grams, valued at Rs. 5,03,622/- were recovered. As the Applicant attempted to smuggle the gold by way of concealment and was not an eligible passenger to bring gold into India, and was also not in possession of any valid document/permit/licence for the legal import of gold into India, the impugned gold was seized under Section 110 of the Customs Act, 1962 under a mahazar on 27.12.2019.

3. In his voluntary statement recorded under Section of 108 of the Customs Act, 1962 immediately after seizure, the Applicant stated inter-alia that he carried textiles goods to Bangkok to sell them and earned approximately Rs. 20,000/-; that the impugned gold was handed over to him by an unknown person outside the Bangkok Airport with an instruction to hand it over to an unknown person outside Chennai Airport who would pay him Rs. 5,000/- for the job; that he had no valid permit/licence/document for the import of the said gold; that he was well aware that smuggling of gold by way of concealment and not

declaring to Customs was an offence and requested to pardon. The Applicant vide letter dated 27.12.2019 requested for adjudication of the case without issue of Show Cause Notice.

4. The adjudicating authority adjudicated the matter vide aforesaid Order-in-Original No. 219/2020-21-Commissionerate-1 dated 28.10.2020 vide which the seized 5 gold cut bits weighing 147 grams of value Rs. 5,03,622/-, recovered from the Applicant, were confiscated absolutely under Section 111(d) and 111(l) of the Customs Act, 1962 read with Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992. The material objects used to conceal the said gold i.e. black colour adhesive tape was also confiscated absolutely under Section 119 of the Customs Act, 1962. Besides, a penalty of Rs. 50,000/- was imposed on the Applicant under Section 112 (a) of the Act, *ibid*.

5. Aggrieved by the said O-I-O, the Applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai, who rejected the appeal of Applicant and upheld the order of adjudicating authority vide impugned O-I-A as mentioned above. Aggrieved by O-I-A, the Applicant has filed the instant revision application.

6. The instant revision application has been filed mainly on the grounds that order of adjudicating authority is against law, weight of evidence and probabilities of the case; that the gold belongs to him and he had kept in his shirt pocket but the officers of customs registered the case, as if the gold were recovered from hollow pipe of the trolley used for carrying the said checked-in luggage; that the Applicant never attempted to pass through green channel; that the impugned gold was recovered from the Applicant, therefore he is entitled to get back the gold on payment of baggage rate of duty; that gold is a restricted item and not a prohibited good; that the adjudicating authority ought to have allowed redemption of the seized gold. The prayer is to set aside the impugned Order-in-Appeal; that the impugned gold items be permitted for re-export/release and that the penalty be set aside/ reduced.

7. Personal hearings in the matter were fixed on 27.01.2025 and 29.01.2025 on virtual mode. On 29.01.2025, Smt. P. Kamalamalar, Advocate appeared on behalf of the Applicant and reiterated the grounds of appeal contained in the revision application. Sh.

P.K. Saravanan, Deputy Commissioner of Customs, Chennai appeared on 29.01.2025 on behalf of the respondent department and submitted that this case is identical with another revision application case before the revisionary authority against Order-in-Appeal Airport. C. Cus. I. No. 17/2021 dated 20.01.2021 which was also passed by the same appellate authority. He requested for treating these two cases on par as the two applicants, though apparently unconnected, have too many factors in common, which is unlikely to be a coincidence. Both the passengers travelled on the same flight, sat in adjacent seats, returned on the same flight, bought gold from the same shop with almost matching invoice numbers, they were both detained together, had identical modus operandi, were represented by the same lawyer, filed retractions of statement on the same date in identical language. He submitted that the plea taken by the applicants that one gold rod was cut into 5 pieces and hidden into the hollow tubes/pipes for safety purposes only, is untenable as no one would cut up a gold bar for such a purpose. He submitted that the impugned gold cannot be held to be bonafide baggage and that mensrea in respect of the smuggling is clearly established in the matter. He quoted the Samynathan Murugesan order of the Hon'ble High court and stated that the O-I-A is proper and correct and should be upheld.

8. The Government has examined the matter. It is observed that the impugned gold items were recovered from the Applicant when search was conducted by Customs and that the goods were not declared by the Applicant despite his being aware that smuggling of goods by not declaring them to Customs and evading the payment of duty is a violation of the law. He admitted that he acted as a carrier for a monetary consideration and seized gold items did not belong to him. The requirement of Section 77 of the Customs Act, 1962 to declare the goods was not met. He has admitted as much in his statement given to Customs under Section of 108 of the Customs Act, 1962. The sequence of events has been recorded vide mahazar dated 27.12.2019 in presence of independent witnesses which also substantiates the acts of Applicant in an attempt to smuggle the confiscated goods. Reliance is placed on the judgement of *Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs. U.O.I* {1997 (89) ELT 646 (SC)}, wherein *Hon'ble Supreme Court 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 due to lure of earning easy money. The government concurs with Commissioner (Appeals) observation in para (8) of the O-I-A that a voluntary statement is admissible evidence and the seizure of the concealed gold establishes culpability.

8.2 It is a fact on record that the Applicant is a frequent traveller; had stayed abroad only for one day and was not an eligible passenger to bring gold into India as he did not satisfy the conditions as laid down in Customs Notification 50/2017-Cus dated 30.06.2017 since he had not declared the gold even though opportunities were there to declare the same to Customs. The appellate authority in para (8) of the said O-I-A has discussed the applicant's ineligibility to bring gold under notification 50/2017-Cus dated 30.06.2017.

8.3 As per rule 3(b) of the Baggage Rules read with Annexure-I, gold or silver ornaments only upto a value of Rs. 50,000/- (Rupees Fifty Thousand only) can be imported, if worn on the person or carried on person. In this case, the imported gold was not in jewellery form, was not worn nor carried on the person and was of a much higher value than prescribed. Moreover in the OIO, it is recorded 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 Applicant to have made a proper declaration under Section 77 of the Customs Act, 1962.

9. 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 item, as stipulated under Section 77 of the Act, *ibid*. 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 concurs with the lower authorities that the ingeniously concealed inside the hollow pipes of the trolley used for carrying the checked-in luggage was liable to confiscation under Section 111 *ibid* and that the Applicant was liable for penalty.

10.1 Another contention of the Applicant is that the import of gold is not 'prohibited'. However, the Government observes that this contention of the Applicant is in the teeth of 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."*

10.2 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-----."

10.3 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*.

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

11. 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.

12.1 The Applicant has requested for allowing re-export for the impugned 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-

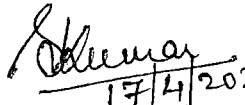
requisite for allowing re-export. Hon'ble Allahabad High Court has, in the case of *Deepak Bajaj vs Commissioner of Customs (P), Lucknow*{2019(365) ELT 695(All.)}, held that a declaration under Section 77 is a *sine qua non* for allowing re-export under Section 80 of the Act, *ibid*. In this case, the Applicant had not made a true declaration under Section 77.

12.2 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.

13. 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.

14. In view of the facts and circumstances of the case, the Government finds no grounds to interfere with the order of Commissioner (Appeals). The penalty imposed by the original authority, as upheld by the Commissioner (Appeals), is neither harsh nor excessive.

15. The revision application is, accordingly, rejected.


17/4/2025
(Shubhagata Kumar)

Additional Secretary to the Government of India

Shri Muthuramalingam,
S/o Shri Muniyasamy,
No.33,R.V. Nagar,
3rd Street, Kodungaiyur,
Chennai – 600 118.

Order No. 45 /25-Cus dated 17-04-2025

Copy to:

1. The Commissioner of Customs (Appeals-I), Chennai Airport & Air Cargo, 3rd floor, New Custom House, GST Road, Meenambakkam, Chennai – 600 016.
2. The Principal Commissioner of Customs, Commissionerate-I, Chennai-I (Airport), New Custom House, Meenambakkam, Chennai-600 027.

3. Shri S. Palanikumar, Kameshwaran & P. Kamalamalar, Advocates, No. 10, Sunkurama Street, 2nd Floor, Chennai-600 001.
4. PPS to AS (RA).
5. Guard file.
6. Spare Copy.
7. Notice Board.

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