IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	26.09.2024
Pronounced On	.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.61, 378, 382, 386, 388, 389, 390, 391, 392 and 395 of 2022
and
W.M.P.Nos.54, 436, 440, 443, 445, 446, 447, 448, 449 and 452 of 2022

W.P.No.61 of 2022

N.Kaliyamoorthy ... Petitioner

Vs.

1.The Commissioner of Customs,
Chennai-I Commissionerate,
New Custom House, Meenambakkam,
Chennai – 600 027.

2.The Joint Commissioner of Customs
(Adjudication – Air),
Office of the Commissioner of Customs
(Chennai – I), New Custom House,
Meenambakkam, Chennai – 600 027.

3.The Commissioner of Customs
(Appeals – I), Custom House,
60, Rajaji Salai, Chennai – 600 001.

4.The Principal Commissioner &
Ex-Officio Additional Secretary to
Government of India,
Ministry of Finance,
Department of Revenue,

8th Floor,
World Trade Centre – I,
Cuffe Parade, Mumbai – 400 005. ... Respondents

Prayer in W.P.No.61 of 2022**:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in and connected with order of the 4th respondent in Order No.269 to 281/2021/CUS(SZ)/ASRA/Mumbai dated 25.10.2021 in F.No.373/112-124/B/15-RA/6304, and to quash the same and consequently direct the respondents herein to release the gold jewellery weighing 185.8 grams and valued at Rs.5,14,573/- which is subject matter of proceedings of the 1st respondent in O.S.No.55/2013-INT (Air).

In all W.Ps.

For Petitioners : Mr.B.Sathish Sundar

For Respondents : Ms.Anu Ganesan
Standing Counsel

COMMON ORDER

By this Common Order, all the Writ Petitions are being disposed of.

2. Almost a similar case was also heard on 23.08.2024 in W.P.No.15217 of 2021.

3. The facts of the case are also somewhat similar and the issue that arise for consideration in the said Writ Petition and the present Writ Petitions is whether the petitioners who had imported gold jewellery and had walked out without making a declaration under the Baggage Rules, 1998 read with Section 77 of the Customs Act, 1962 are entitled for redemption of the gold jewellery imported by them which was attempted to be smuggled by them without making declaration under the aforesaid Rules.

4. The brief fact of the case are that the petitioners are part of the Tamil Nadu Jewellery Merchants Association at Panruti and had travelled to Malaysia for a period of six days and had returned on 27.07.2013. On arrival, the petitioners attempted to walk through the green channel subsequently were arrested on 28.07.2013 and thereafter, released on 30.07.2013. Meanwhile, statements were recorded from each of the petitioners on 27.07.2013.

5. In the statements that were recorded, these petitioners had stated that each of them were given jewellery which was found in their possession by one Mr.P.S.Ranganathan which was to be handed over to him outside Chennai Airport. Statements recorded from each of the petitioners, are almost identical.

Statement of Mr.P.S.Ranganathan who appears to be the organizer of the trip was also recorded on the same date. Several amounts carried by them and value of the jewellery found in their possession.

6. The statement of the petitioner in W.P.No.378 of 2022 namely Sivaguru Sumathi and the statement of the petitioner in W.P.No.61 of 2022 namely N.Kaliyamoorthy and the Statement of the trip organizer namely Mr.P.S.Ranganathan are captured below:-

Sl. No.	Writ Petition and Name	Crux of the Statement recorded u/s.102 dated 27.07.2013 immediately after seizure	Statement recorded by RSI
1.	W.P.No.378/2022 Sivaguru Sumathi	i. Her husband owns a gold pawn shop in Panruti. ii. She had paid Rs.4,000 pm for 5 years towards her foreign trip. iii. Indian currency to the tune of Rs.4,00,000/- was handed to her by Mr.kaliyamoorthy. Plus, she carried Rs.35,000/- iv. She handed over the cash to Mr.P.S.Ranganathan. v. After spending 3 days in Singapore, they travelled to Malaysia	NA

		where she was given a chain and two bracelets by Mr.P.S.Ranganathan, to be handed over to him outside Chennai Airport and she would be given 22 Carat gold of same weigth	
2.	W.P.No.61 of 2022 N.Kaliyamoorthy	i. He owns a gold pawn shop and was the secretary of the Jewellers' Association. ii. He had paid Rs.2,000 pm for 5 years. iii. Was handed over Rs.2,50,000/- plus he carried Rs.45,000/- iv. When he came to Malaysia after spending three days in Singapore, he was given two gold bracelets and one gold chain to be handed over outside Chennai Airport. v. Would be given 22 Carat gold of same weight	i. Jewellery of 24 Carat was bought by each co-passenger as 22 Carat was costlier and the Jewellers told they could carry gold up to the value of Rs.5,00,000/- and customs duty thereon would be meagre. ii. He did not meet Shri Ranganathan in Singapore or Malaysia and hence could not inform about the purchase. iii. The jewellery was bought using the money handed over by him to each passenger and through selling of some of the

			jewellery worn by them.
3.	P.S.Ranganathan – Organizer of the trip (To the best of Respondent's knowledge, there is no writ petition pending)	i. He is the President of the TN Jewellery Merchants Association at Panruti, and his son owned a gold jewellery shop namely S.R.Jewellery in Panruti. He is also a partner along with his son-in-law in the gold jewellery shop at Neyveli. ii. He used to go to Singapore for the past 10 years, that last year he went once and this year he went twice. iii. All passengers who came along were all members of the Jewellers' Association. iv. Funds from the chit as well as funds mobilized by him was utilized for purchase of jewellery.	i. Through the chit, he managed to provide Rs.7,75,000/- with an interest of Rs.5,11,500/- totalling to Rs.12,86,500/-. ii. Through another scheme for a group of 29 members plus himself, for the 6th month, he took the chit amounting to Rs.12,00,000/- in his name. iii. He arranged another 5 lakhs through the Panruti Pawn Brokers Association. iv. Therefore, he totally arranged for Rs.32,00,000/- and all the amounts were handed over to kaliyamoorthy at Panruti itself as per the wish of the co-passengers. v. He knew that the

			members bought gold jewellery and there is no need for him to assit them a they are in the same trade. vi. Co-passengers implicated him as they were not able to account individually and that he would safeguard them. vii. Gold would be converted and given back to them means that the gold brought by them did not belong to them.

7. The above statements that were given by the importers which are similar for most of the petitioners were later retracted on 05.08.2013. A common reply also appears in this background that the petitioners were issued with Show Cause Notice dated 20.01.2014 under Section 124 of the Customs Act, 1962, wherein it was proposed that the goods imported by them which include certain electrical items and few other miscellaneous items along with the jewellery to be confiscated under Sections 111(d), 112 and 114 of the Customs Act, 1962. Relevant portion of the Show Cause Notice dated 20.01.2014 reads as under:-

"6. Whereas, it appears that in the impugned case, the following legal provisions have been violated:-

a) As per the Notification No.12/2012-Customs dated 17.03.2012, as amended, issued under Section 25 of the Customs Act, 1962, only passengers of Indian origin or a passenger in possession of a valid passport issued under the Indian Passports Act, 1967, who have stayed abroad for six months are eligible to import gold and clear the same on payment of Customs duty at the rate prescribed.

b) As per para 2.20 of Ch. 2 of the Foreign Trade Policy and Hand Book of Procedures 2009-14, only bona fide household goods and personal effects may be imported as part of passengers baggage as per limits, terms and conditions thereof in the Baggage Rules, 1998.

c) As per Section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992, all goods to which sub-section (2) applies shall be deemed to be goods, the import or export of which has been prohibited under Section 11 of the Customs Act, 1962 and Foreign Trade (Regulation) Rules, 1993 and the same applies to goods not constituting the bona fide baggage of any passenger. Therefore, non-bona fide passenger baggage needs to be treated as Prohibited goods under Section 11 of the Customs Act, 1962.

d) As per Section 77 of the Customs Act, 1962 the owner of any baggage shall, for the purpose of clearing it, make a true declaration of its contents to the proper officer.

e) As per Section 79 only bona fide baggage is exempted from duty subject to certain conditions.

f) As per Section 111(d), any goods which are imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation.

g) As per Section 111 (1) any dutiable or prohibited *goods which are not included or are in excess of those included in the declaration made under Section 77 in the case of baggage are liable for confiscation.*

h) *Any person who in relation to any goods, does or omits to do 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 is liable for penal action under Section 112 of the Customs Act, 1962.*

i) *As per Regulation 3(1)(a) of the Foreign Exchange Management (Export and Import of Currency) Regulations, 2000, any person resident in India may take outside India currency notes of Government of India and Reserve Bank of India notes up to an amount not exceeding Rs.7,500/- per person.*

j) *Any person, who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets the doing or omission of such an act shall be liable for penal action under Section 114 of the Customs Act, 1962.*

8. In the common reply dated 15.01.2014, the trip organizer namely Mr.P.S.Ranganathan, stated as follows:-

i. *The passengers had bought 24 Carat gold jewelleries by exchanging the 22 Carat jewelleries worn by them. The passengers were also helped by their relatives in buying.*

ii. *As stated by Mr.Kaliyamoorthy, the gold purchase was not informed by the passengers to Renganathan.*

9. The Customs RSI (Relative Strength Index) has also recorded statement from Mr.P.S.Ranganathan. Relevant portion of the statement of Mr.P.S.Ranganathan is extracted below:-

i. Through the chit, he managed to provide Rs.7,75,000/- with an interest of Rs.5,11,500/- totalling to Rs.12,86,500/-.
ii. Through another scheme for a group of 29 members plus himself, for the 6th month, he took the chit amounting to Rs.12,00,000/- in his name.
iii. He arranged another 5 lakhs through the Panruti Pawn Brokers Association.
iv. Therefore, he totally arranged for Rs.32,00,000/- and all the amounts were handed over to kaliyamoorthy at Panruti itself as per the wish of the co-passengers.
v. He knew that the members bought gold jewellery and there is no need for him to assit them a they are in the same trade.
vi. Co-passengers implicated him as they were not able to account individually and that he would safeguard them.
vii. Gold would be converted and given back to them means that the gold brought by them did not belong to them.

10. The Original Authority by Order-in-Original No.281 dated 25.04.2014 in F.NO.OS/55/2013 – INT (AIR) passed the following Order:-

25. Therefore, taking into account the facts and circumstances of this case, I proceed to pass the following order:-
i. I order for absolute confiscation of the above said seized crude gold of 24K purity, as per Table-1

under Section 111 (d) and (l) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992;

ii. *I order for confiscation of the above said seized 13 Samsung LED Televisions, as per Table-2 under Section 111(1) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992. However, I allow for redemption of the 13 Samsung LED Television(s) on payment of a redemption find of 25% (Twenty Five percentage) of the value of the Television(s), as per Table-2, brought by the individual passengers and on payment of the applicable baggage duty upon extending the permissible baggage allowance.*

iii. *I order for Personal Penalty of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand Only) on Shri P.S.Ranganathan, Rs.50,000/- (Rupees Fifty Thousand Only) on Smt.Sivagami Sumathi, Rs.70,000/- (Rupees Seventy Thousand Only) on Shri T.C.Venkatesan, Rs.50,000/- (Rupees Fifty Thousand Only) on Shri.N.Kaliyamoorthy, Rs.25,000/- (Rupees Twenty Five Thousand Only) on Shri R.Somasundaram, Rs.25,000/- (Rupees Twenty Five Thousand Only) on Shri N.Ramesh, Rs.35,000/- (Rupees Thirty Five Thousand Only) on Shri N.Mathivanan, Rs.25,000/- (Rupees Twenty Five Thousand Only) on Shri L.Loganathan, Rs.35,000/- (Rupees Thirty Five Thousand Only) Shri B.Sivaguru, Rs.50,000/- (Rupees Fifty Thousand Only) on Smt.T.Chandra, Rs.25,000/- (Rupees Twenty Five Thousand Only) on Shri B.Durai, Rs.25,000/- (Rupees Twenty Five Thousand Only) on Shri S.Thiyagarajan and Rs.35,000/- (Rupees Thirty Five Thousand Only) on Shri N.Suresh, under Section 112(a) and*

iv. *I order for Personal Penalty of Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand Only) on Shri P.S.Ranganathan, Rs.40,000/- (Rupees Forty Thousand Only) on Smt.Sivaguru Sumathi,*

> *Rs.10,000/- (Rupees Ten Thousand Only) on Shri T.C.Venkatesan, Rs.30,000/- (Rupees Thirty Thousand Only) on Shri N.Kaliyamoorthy, Rs.30,000/- (Rupees Thirty Thousand Only) on Shri R.Somasundaram, Rs.15,000/- (Rupees Fifty Thousand) on Shri N.Ramesh Rs.15,000/- (Rupees Fifty Thousand) on Shri N.Mathivanan, Rs.30,000/- (Rupees Thirty Thousand Only) on Shri.L.Loganathan, Rs.35,000/- (Rupees Thirty Five Thousand Only) on Shri B.Sivaguru, Rs.30,000/- (Rupees Thirty Thousand Only) on Smt.T.Chandra, Rs.30,000/- (Rupees Thirty Thousand Only) on Shri B.Durai, Rs.30,000/- (Rupees Thirty Thousand Only) on Shri.S.Thiyagarajan, and Rs.30,000/- (Rupees Thirty Thousand Only) on Shri.N.Suresh under Section 114(i) of the Customs Act, 1962.*

11. The appeal before the Appellate Commissioner was dismissed vide Order-in-Appeal C.Cus.I No.6/2014 dated 28.10.2014. The reasonings in each of the Orders are identical. For the sake of clarity and record, relevant portion of the Order passed in Order-in-Appeal C.Cus.I No.6/2014 dated 28.10.2014 reads as under:-

> *“15. The Appellant's contention that placing reliance on the above Judgments is not sustainable is not acceptable. (Portions of the Orders high lighted for emphasis). Non-fullfillment of conditions laid down therein for import renders the goods as prohibited goods and liable for absolute confiscation. The Appellant has shown a great disregard to the law of land with a narrow-minded aim of evading customs duty by trying to smuggle currency out of the Country and bring in gold. These no doubts invite stringent punishment in the form of a steep penalty.*

16. Considering the above findings and relying on the above case laws, I find no infirmity in the Order of the Respondent in confiscating absolutely of the Impugned goods. I also find that the penalty of Rs.50,000/- imposed under Section 112(a) of the CA, 1962 and Rs.30,000/- imposed under Section 114(i) of the CA, 1962, are both fair and commensurate with the offence committed. Hence the Impugned Order passed by the Respondent is just and well-reasoned, needs no intervention.

17. As the gold have been absolutely confiscated and the same has been upheld the request for re-export cannot be considered at this juncture.

18. Appeal rejected."

12. On further revision before the 4th Respondent herein under Section 129DD of the Customs Act, 1962, in Order No.269-281/2021/CUS(SZ)ASRA/Mumbai in F.No.373/112-124/B/15-RA/6316, the Order of the Lower Authority and the Lower Appellate Authority has been confirmed. Relevant portion of the said Order reads as under:-

"13. There is no doubt that the gold brought by non-eligible persons without fulfilling required conditions becomes prohibited. The Hon'ble High Court of Madras, in the case of Commissioner of Customs (Air), Chennai-1 vs. P.Sinnasamy reported in 2016 (344) E.L.T. 1154 (Mad.), relying on the judgment of the Apex Court in the case of Om Prakash Bhatia vs. Commissioner of Customs, Delhi reported in 2003 (155) E.L.T. 423(S.C.), has held that "if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and

(b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods..... Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods." It is thus 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".

13. Arguing on behalf of the petitioners, the learned counsel for the petitioners would submit that no doubt the petitioners had violated the "baggage rule" under Section 77 and Section 78 of the Baggage Rules, 1998, however would submit that imported items were not prohibited either under a notification issued under Section 11 of the Customs Act, 1962 or under Section 33 of the Foreign Trade (Development and Regulation) Act, 1992.

14. It is therefore submitted that the imported gold carried in person by the petitioners at best are violated but are also allowed to redeemed under Section 125 of the Customs Act, 1962.

15. In this connection, the learned counsel for the petitioners would further submit that the petitioners are outside the purview of Customs Notification No.12/2012-Customs dated 17.03.2012 as it applied only to a person who is ineligible and who has stayed over a period specified under the Notification.

16. It is submitted that the said Notification is totally inapplicable to the facts of the case.

17. The learned counsel for the petitioners has placed reliance on the following decisions of the Hon'ble Supreme Court, Andhra Pradesh High Court, Bombay High Court, Calcutta High Court, Punjab and Haryana High Court and that of this Court :-

i. ***Hargovind Das K.Joshi*** *vs.* ***Collector of Customs****, 1992 (61) E.L.T. 172 (S.C.);*
ii. ***Neyveli Lignite Corporation Limited*** *vs.* ***Union of India****, 2009 (242) E.L.T. 487 (Mad.);*
iii. ***Shaik Jamal Basha*** *vs.* ***Government of India****, 1997 (91) E.L.T. 277 (A.P.);*
iv. ***T.Elavarasan*** *vs.* ***Commissioner of Customs (Airport), Chennai,*** *2011 (266) E.L.T. 167 (Mad.);*
v. ***Palaniappan*** *vs.* ***Principal Commissioner of Customs, Chennai – 1****, 2016 (339) E.L.T. 367 (Mad.);*

vi. ***Union of India*** *vs.* ***Dhanak M.Ramji****, 2009 (248) E.L.T. 127 (Bom.);*

vii. ***Sapna Sanjeev Kohli*** *vs.* ***Commissioner of Customs, Mumbai,*** *2009 (240) E.L.T. 207 (Bom.);*

viii. ***Shabir Ahmed Abdul Rehman*** *vs.* ***Union of India****, 2009 (235) E.L.T. 402 (Bom.);*

ix. ***Commissioner of Customs*** *vs.* ***Atul Automations Private Limited****, 2019 (365) E.L.T. 465 (S.C.);*

x. ***Commissioner of Customs (Preventive) West Bengal*** *vs.* ***India Sales International****, 2009 (241) E.L.T. 182 (Cal.);*

xi. ***Horizon Ferro Alloys Pvt. Ltd****. vs.* ***Union of India****, 2016 (340) E.L.T. 27 (P & H);*

xii. ***Commissioner of Customs (AIR), Chennai-I*** *vs.* ***P.Sinnasamy,*** *2016 (344) E.L.T. 1154 (Mad.);*

xiii. ***In RE: Ashok Kumar Verma,*** *2019 (369) E.L.T. 1677 (G.O.I.);*

xiv. ***Director of Revenue Intelligence*** *vs.* ***Pushpa Lekhumal Tolani****, 2017 (353) E.L.T. 129 (S.C.);*

xv. ***Rayavarapu Sri Devi*** *vs.* ***The Principal Commissioner of Customs (Adjudication-Air), Chennai – 600 027****, W.P.No.6734 of 2022 dated 19.02.2024;*

xvi. ***Smt.G.K.Shanmuga Priya*** *vs.* ***The Principal Commissioner & Ex-Officio, Mumbai*** *– 400 005, W.P.(MD).No.198 of 2020 dated 27.01.2023.*

18. Learned counsel for the petitioners has also placed reliance on the following orders passed by the Revisional Authority, Mumbai, Order of CESTAT, New Delhi, Order of CESTAT, Mumbai, the Customs, Excise and Service Tax Appellate Tribunal, New Delhi:-

i. **Order No.17/2017-Cus. (SZ/ASRA/Mumbai)** dated **14.12.2017**.

ii. **Dinker Khindria** Vs. **Commissioner of Customs, New Delhi**, 2009 (237) E.L.T. 41 (Tri.-Del.).

iii. **Yakub Ibrahim Yusuf** Vs. **Commissioner of Customs, Mumbai**, 2011 (263) E.L.T. 685 (Tri.-Mumbai).

iv. **In RE : Ashok Kumar Verma**, 2019 (369) E.L.T. 1677 (G.O.I.).

v. **Final Orders No.51622-51623/2020** dated **10.11.2020**.

19. On the other hand, learned Senior Standing Counsel for the respondents has relied on the same judgments which was relied by the learned counsel for the petitioners.

20. Apart from that, the learned Senior Standing counsel for the respondents has also relied on the following decision of the Hon'ble Supreme Court:-

> ***Sheik Mohd. Omer*** *vs.* ***Collector of Customs, Calcutta & Ors,*** *1983 (13) E.L.T. 1439 (S.C.).*

21. The issue that arises for consideration in the present Writ Petition is whether the absolute confiscation without objection for redemption of the golds carried in person are in violation of Baggage Rules, 1998. In other words, whether the Impugned Order dated 25.10.2021 suspending the Order of the

Original Adjudicating Authority and the Lower Appellate Authority in the revision filed by the respective petitioners under Section 129DD of the Customs Act, 1962 can be interfered with.

22. I have perused the Impugned Order dated 25.10.2021 passed by the 4th respondent rejecting the revision application filed by the petitioners. I have also perused the Appellate Order of the Commissioner of Customs (Appeals) and the Order-in-Original No.281 in F.No.O.S.No.55/2013-INT (AIR) dated 25.04.2014 passed by the 2nd respondent Original Adjudicating Authority. I have also perused the provisions of the Customs Act, 1962, Notification No.12/2012-Customs dated 17.03.2012 as amended from time to time and as it stood during the period in dispute. I have also perused the provisions of the Baggage Rules, 1998.

23. The Impugned Order dated 25.10.2021 passed by the 4th respondent under Section 129DD of the Customs Act, 1962 has proceeded on assumption that the petitioners were not entitled to the benefit of Sl.No.321 to Exemption under Notification No.12/2012-Customs dated 17.03.2012.

24. Sl.No.321 to Exemption under the above notification relates to goods falling under Chapter/Heading No.71 or 98 of the 1st Schedule to the Customs Tariff Act, 1971 (51 of 1975). The description of the goods in Sl.No.321 to Notification No.12/2012-Customs dated 17.03.2012 is as follows:-

i. Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins having gold content not below 99.5%, imported by the eligible passenger.
ii. Gold in any form other than,
    i. including tola bars and ornaments, but excluding ornaments studded with stones or pearls.

25. Sl.No.321 to the above notification deals with import of goods by "eligible passenger" amended in view of the amendment to the above Notification vide M.F.(D.R.) Corrigendum F.No.334/1/2012-TRU dated 20.03.2012.

26. Thus, Sl.No.321 to Notification No.12/2012-Customs dated 17.03.2012 is applicable to gold in any other form including tola bars and ornaments. Sl.No.321 to Notification No.12/2012-Customs dated 17.03.2012 however would include only ornaments studded with stones or pearls.

27. A perusal of the above notification indicates that the above exemption is applicable only to an “eligible passenger” as defined in the said notification. The expression “eligible passenger” has been defined in Condition No.35 to Annexure to Notification No.12/2012-Customs dated 17.03.2012 [General Exemption No.165 in the Customs Manual]. It reads as under:-

> “For the purposes of this notification, “**eligible passenger**” means 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.”

28. In this case, none of the petitioner is “eligible passenger” within the meaning of the Explanation 2 to Condition No.35 to Notification No.12/2012-Customs dated 17.03.2012. Therefore, imports rather attempted to smuggle gold ornaments by these petitioners are not in the contemplation of the exemption under Sl.No.321 to Notification No.12/2012-Customs dated 17.03.2012.

29. Therefore, the Impugned Order dated 25.10.2021 holding that the petitioners were not entitled to clear the gold carried in person by them were liable to be confiscated and cannot be countenanced on the reasoning given in the Order. Instead, the attempt of these petitioner to walk away with the gold ornaments without making appropriate declarations under Chapter XI of the Customs Act, 1962 ought to have been examined from the perspective of Chapter XI of the Customs Act, 1962, if applicable which deals with special provisions regarding "Baggage, Goods and Imported or Exported Goods by Post, Courier, and/or Stores".

30. As per Section 77 of the Customs Act, 1962, the owner of any "baggage" shall, for the purpose of clearing it, make a declaration of its contents to the proper officer.

31. The expression "baggage" has been defined in Section 2(3) of the Customs Act, 1962, as follows:-

> "baggage" includes unaccompanied baggage but does not include motor vehicles."

32. The gold ornaments worn in person are not “baggage” within the definition in Section 2(3) of the Customs Act, 1962.

33. As far as the “jewellery” is concerned, as per the Rule 6 of the Baggage Rules, 1998, a passenger returning to India is allowed clearance free of duty jewellery in his *bona fide* baggage to the extent mentioned in column (2) of Appendix D. Appendix D relates to Indian Passenger who has been residing abroad for over one year. It reads as under:-

> “Column (2)
> i. Jewellery upto an aggregate value of Rs.10,000/- by a gentleman passenger, or
> ii. Upto an aggregate value of Rs.20,000/- by a lady passenger.”

34. As far as passengers returning from countries other than Nepal, Bhutan, Myanmar, China is concerned, the requirement is specified in Rule 3 of the Baggage Rules, 1998. Appendix A is reproduced below:-

	Articles allowed free of duty
(1)	(2)
(a) All passengers of an above 10 years of age and returning after a stay abroad of more than three days.	i. Used personal effects, excluding jewellery, required for satisfying daily necessities of life. ii. Articles other than those mentioned in Annex.I up to a value of Rs.25,000/- if these are carried on the person or in the

	Articles allowed free of duty
	accompanied baggage of the passenger.
(b) All passengers of and above 10 years of age and returning after a stay abroad of three days or less.	i. Used personal effects, excluding jewellery, required for satisfying daily necessities of life. ii. Articles other than those mentioned in Annex.I up to a value of Rs.12,000/- if these are carried on the person or in the accompanied baggage of the passenger.
(c) All passengers up to 10 years of age and returning after say abroad of more than three days.	i. Used personal effects, excluding jewellery, required for satisfying daily necessities of life. ii. Articles other than those mentioned in Annex.I up to a value of Rs.6,000/- if these are carried on the person or in the accompanied baggage of the passenger.
(d) All passengers up to 10 years of age and returning after stay abroad of three days or less.	i. Used personal effects, excluding jewellery, required for satisfying daily necessities of life. ii. Articles other than those mentioned in Annex.I up to a value of Rs.3,000/- if these are carried on the person or in the accompanied baggage of the passenger.
Explanation.- The free allowance under this rule shall not be allowed to be pooled with the free allowance of any other passenger.	

35. In fact, Appendix A to F to the Baggage Rules, 1998, have been framed to implement the requirement of Section 79 of the Customs Act, 1962.

36. Even under the Baggage Rules, 1998, these petitioners could not have walked free without making appropriate declarations if gold ornaments were kept in their "baggage".

37. Thus, neither under the provisions of the Baggage Rules, 1998 nor under Notification No.12/2012-Customs dated 17.03.2012, the petitioners were entitled to any duty exemption.

38. Thus, these petitioners ought to have declared with the customs authority soon after they alighted from the flight about gold ornaments which were worn by them in person before the customs authorities at the airport.

39. In this case, all the petitioners have attempted to "smuggle" the gold by wearing them in their persons which they could not be imported duty free either under the above mentioned notification or under the Baggage Rules, 1998.

40. At the same time, one should not lose sight of the fact that gold is no longer prohibited after the Gold (Control) Act, 1968 was repealed in the year 1990 i.e., with effect from 6th June 1990.

41. The import of gold is not prohibited. Rather, it is restricted and regulated. Therefore, any person carrying gold ornament ought to have paid appropriate customs duty if whether such gold jewellery/ornament was worn in person or kept in the "baggage".

42. Absolute confiscation of the imported quantity of gold in the hands of each of these petitioners cannot be ordered to be absolutely confiscated under Section 125 of the Customs Act, 1962.

43. The option ought to have been given to the owner of such gold to redeem in lieu of confiscation under Section 125 of the Customs Act, 1962. Therefore, the Order rejecting the request for redemption or reexport cannot be sustained.

44. Considering the fact that the goods are not absolutely confiscable, the Court is of the view that the Impugned Order dated 25.10.2021 passed by the

4th respondent, holding the goods are not redeemable and is not liable to be confiscated is to be interfered with.

45. Therefore, the Impugned Order dated 25.10.2021, affirming the Order of the lower authority or the lower appellate authority is liable to be interfered with. Accordingly, the Impugned Order dated 25.10.2021 is liable to be quashed.

46. Therefore, the case can be remitted back to the 2nd respondent to impose the redemption fine on each of the petitioners under Section 125 of the Customs Act, 1962 taking note of the value of the gold that was attempted to be smuggled by these petitioners.

47. This exercise shall be carried out by the 2nd respondent Joint Commissioner of Customs within a period of 8 weeks from the date of receipt of a copy of this order.

48. If required, the respective petitioners shall be heard before final orders are passed.

49. These Writ Petitions are allowed. No costs. Connected Writ Miscellaneous Petitions are closed.

.01.2025

Index: Yes/No
Internet:Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No

rgm/arb

To:

1.The Commissioner of Customs,
Chennai-I Commissionerate,
New Custom House, Meenambakkam,
Chennai – 600 027.

2.The Joint Commissioner of Customs
(Adjudication – Air),
Office of the Commissioner of Customs
(Chennai – I), New Custom House,
Meenambakkam, Chennai – 600 027.

3.The Commissioner of Customs
(Appeals – I), Custom House,
60, Rajaji Salai, Chennai – 600 001.

4. The Principal Commissioner &
Ex-Officio Additional Secretary to
Government of India,
Ministry of Finance,
Department of Revenue,
8th Floor,
World Trade Centre – I,
Cuffe Parade, Mumbai – 400 005.

C.SARAVANAN, J.

rgm/arb

Pre-delivery Common Order in
W.P.Nos.61 of 2022 etc., batch

.01.2025