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W.P.No.20249 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	04.01.2022
Pronounced On	08.06.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

**W.P.No.20249 of 2021**  
**and**  
**W.M.P.No.21510 of 2021**

1. Chandrasegaram Vijayasundaram
2. Vijayasundaram Mahalakshmi
3. Chandrasegaram Rajaluxmi
4. Somasundaram Chandrasegaram
5. Raveendhiran Shanthadevi

... Petitioners

vs.

1. O/o. Principal Commissioner (Revision Application) and Ex Officio Addl. Secretary to Govt. of India, Ministry of Finance, Department of Revenue, 8<sup>th</sup> Floor, Centre – 1, World Trade Centre, Cuffe Parade, Mumbai – 400 005.
2. The Principal Commissioner of Customs Commissionerate – I, Chennai Airport and Aircargo Complex, New Custom House, Meenambakkam, Chennai – 600 027.



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3. The Joint Commissioner of Customs,  
(Adjudication – Air)  
Commissionerate – I,  
Chennai Airport and Aircargo  
Complex, New Customs House,  
Meenambakkam, Chennai – 600 027.

4. The Assistant Commissioner of Customs  
(Preventive – Refunds)  
Commissionerate – I,  
Chennai Airport and Aircargo  
Complex, New Customs House,  
Meenambakkam,  
Chennai – 600 027.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent herein and connected with order No.165-169/2021-Cus (SZ) ASRA Mumbai dated 14.07.2021 in F.No.380/59 – 63/B/SZ2018-RA/3716 and quash the same and direct the office of the second and fourth respondents to process and cause refunds of the fine and penalty amount collected which is the subject matter of applications in F.Nos.16, 17, 18, 19 and 20/2018 (Prev.Refunds) on the file of the fourth respondent herein.

For Petitioner : Mr.B.Satish Sundar

For Respondents : Mr.M.Santhanaraman



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Senior Standing Counsel.

## ORDER

The petitioners have challenged the impugned order dated 14.07.2021 passed by the first respondent, Revisionary Authority under Section 129 DD of the Customs Act, 1962.

2. By the impugned order, the first respondent, Revisionary Authority has disposed of the revision application filed by the Commissioner of Customs, Chennai and has partly reversed the order passed by the Commissioner of Customs (Appeals) vide Order in Appeal No C.Cus.1.No.69-73/2018 dated 27.04.2018.

3. The petitioners herein are members of the same family. The first and second petitioners are the husband and wife respectively. The third and fourth petitioners are the parents of the first petitioner while the fifth petitioner is the paternal aunt of the first petitioner.



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4. These petitioners are Srilankan nationals based in Colombo. They arrived at the Chennai Airport on 06.05.2017 along with two minor children of the first and second petitioners. All the petitioners were wearing 1594 kgs of gold jewelries valued at Rs.43,95,854/- .

5. It appears that they attempted to walk through the green channel along with two minor children wearing 1594 kgs of gold jewelries without making declaration before the Customs Officers. Apart from the jewelries, the first petitioner had also purchased about 112 bottles of liquor valued at Rs.1,50,000/-.

6. The officers of Air Customs Department intercepted them and found that there was an attempt to smuggle liquor beyond the permissible limit. It was further found that these petitioners along with two minor children were wearing jewelries weighing about 1594 kgs and therefore the jewelries and the liquor bottles were seized. Subsequently, a show cause notice under Section 124 of the Customs Act, 1962 was issued to them on 02.11.2017, to show cause as to why:-



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i) the five nos. of gold bangales and two nos. of gold chains, totally weighing 3871 gms and totally valued at Rs.9,90,236/- and the 24 bottles of Chivas Regal (each 1 ltr) valued at Rs.36,000/- the goods totally valued at Rs.10,26,236/- recovered from the possession of Shri.ChandrasegaramVijayasundaram should not be confiscated under Section 111(d) and (i) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992;

ii) the four nos. of gold bangales and one gold chain, totally weighing 293.5 gms and totally valued at Rs.8,14,076/- and the 12 bottles of Black Label (each 1Ltr) and 6 bottles of Chivas Regal totally valued at Rs.27,000/- and the goods totally valued at Rs.8,10,381/- recovered from the possession of Smt.Vijayasundarammahalakshmi should not be confiscated under Section 111(d) and (1) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992;

iii) the two nos. of gold kadas and two nos. of gold chains, totally weighing 322 gms and totally valued at Rs.8,59,450/- and the 25 bottles of Chivas Regal (each 1 Ltr) valued at Rs.37,500/- the goods totally valued at Rs.8,96,950/- recovered from the possession of Shri.SomasundaramChandrasegaram should not be confiscated under Section 111(d) and (1) of the Customs Act, 1962 read with Foreign Trade Development & Regulation) Act, 1992;

iv) the four nos. of gold bangales and one gold chain with pendant, totally weighing 293.5 gms and totally valued at Rs.7,83,381/- and the 20 bottles of Chivas Regal (each 1 Ltr) valued at Rs.30,000/- , the gollds totally alued at Rs.8,13,381/- recovered from the



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possession of Smt.ChandrasegaramRajaluxmi should not be confiscated under Section 111(d) and (1) of the Customs Act, 1962 read with Foreign Trade ( Development & Regulation) Act, 1992;

v) the four nos. of gold bangles and one gold chain with pendant, totally weighing 304 gms and totally valued at Rs.8,11,406/- and the 25 bottles of Chivas Regal Whisky (each 1 Ltr) valued at Rs.37,500/- , the goods totally valued at Rs.8,48,906/- recovered from the possession of Smt.Chandrasegaram Rajaluxmi should not be confiscated under Section 111(d) and (1) of the Customs Act, 1962 read with Foreign Trade ( Development & Regulation) Act, 1992;

vi)penalty should not be imposed on Shri.Chandrasegaram Vijayasundaram, Smt.Vijayasundaram Mahalakshmi, Shri Somasundaram Chandrasegaram, Smt.Chandrasegaram Rajaluxmi and Smt.Raveendhiran Shanthadevi under Section 112 (a) of the Customs Act, 1962;

vii)penalty should not be imposed on Shri.Chandrasegaram Viajyasundaram, Smt.Vijayasundaram Mahalakshmi, Shri.Somasundaram Chandrasegaram, Smt.Chandrasegaram Rajaluxmi and Smt.Raveendhiran Shanthadevi under Section 114 AA of the Customs Act, 1962.

7. The allegations against the petitioners in the show cause notice

dated 2.11.2017, reads as under:-



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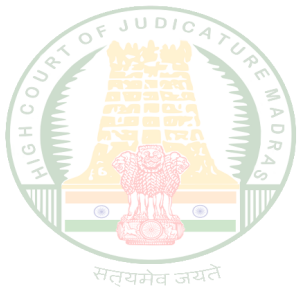
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“10. Shri.K.Sudhakaran, Supervisor of Flemingo Duty Free Shop (Arrival & Departure), Anna International Airport, Chennai gave a voluntary statement dated 10.05.2017, wherein he has inter-alia stated that 12 bottles were sold to the group of passengers against their respective passports; that he would submit the sales details after ascertaining the same from Shri Aneesh, who was the sales staff attending to the sales to the passengers on that day.

11. A summons was issued to Shri.K.Sudhakaran, of M/s.Flemingo DFS, under Section 108 of Customs Act, 1962 on 15.05.2017, as he had failed to submit the sales details of the said date after ascertaining the same from Shri Aneesh, the sales person of DFS as assured by him in his earlier statement. In response to the said Summons, Shri Sudhakaran appeared on 15.05.2017 and gave a voluntary statement wherein he has inter-alia stated that Shri Aneesh, the sales person of DFS who was on duty on the said date had mistakenly sold 112 liquor bottles to the said passengers without knowing the Rules and that he requested to pardon him.

12. Shri Sudhakaran, M/s. Flemingo DFS has submitted a letter dated 18.05.2017, wherein he has stated that he was under the bonafide impression that the matter had been resolved by the aforesaid proceeding; that after seeing the summons issued to him, he was in confused state of mind; that it made him to give a statement on 15.05.2017 as “Shri Aneesh, has mistakenly sold 112 liquor bottles to the said passengers without knowing the Rules properly and that he has requested to ignore the said statement given on 15.05.2017.

13. Shri ChandrasegaramVijayasundaram, has submitted a letter on 08.06.2017, wherein he has stated that the gold



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jewellery that were recovered from his family were their personal jewellery and requested for re-export; that in his earlier statement he has stated that liquor bottles were purchased from DFS Chennai was not true; that as his family jewellery was also detained, he was in confused state of mind. Further, he has stated that he bought only 12 bottles from DFS Chennai for which he paid 384 USD; that the co-passengers who travelled in the same flight, on seeing him requesting to DFS, Chennai for more bottles, offered to sell him their liquor bottles bought and brought from Srilanka for extra 3 US Dollars above the cost price per bottle; that they were seem to be tour operators/group of family and were not familiar to him; that he has paid USD 3400 for all liquor bottles to them and that these bottles were kept in 5 suitcases and distributed to his family members.

14. Shri J.P.Jenne alias Aneesh in his voluntary statement dated 09.06.2017 had stated that he had sold 12 bottles to Shri ChandrasegaramVijayasundaram and his family on 06.05.2017 for 6 passports (2 bottles per passport) and that the payment made was in US Dollar currency and the bills with regard to the sales of the same had also been submitted, the details of which are given below:-

Sl. No.	Name & PP No.	DFS Bill No. & Date	Description	Quantity	Amount in USD
1	Chandrasegaram Vijayasundaram N 6888808	CHN001P00 2750879 06.05.2017	Chivas Regal	2 Nos	64 (128)
2	Vijayasundaram Mahalakshmi P 9610772	CHN001P00 2750879 06.05.2017	Chivas Regal	2 Nos	64 (128)
3	Somasundaram Chandrasegaram N 7477066	CHN001P00 2750881	Chivas Regal	2 Nos	64 (128)





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Sl. No.	Name & PP No.	DFS Bill No. & Date	Description	Quantity	Amount in USD
		06.05.2017			
4	Chandrasegaram Rajaluxmi N7477006	CHN001P00 2750880 06.05.2017	Chivas Regal	2 Nos	64 (128)
5	Raveendhiran Shanthadevi N 3986097	CHN001P00 2750880 06.05.2017	Chivas Regal	2 Nos	64 (128)
6	Vijay 68901470	CHN001P00 2750881 06.05.2017	Chivas Regal	2 Nos	64 (128)

15. The family members of Shri.ChandrasegaramVijayasundaram in their respective statements all dated 12.05.2017 had also not stated whether they had seen Shri ChandrasegaramVijayasundaram buying the liquor bottles from DFS, Chennai.

8. The petitioners replied to the show cause notice vide reply dated 2.11.2017 bearing Reference O.S.Nos.301 to 305/2017 - AIR of the third respondent. The said proceeding culminated in Order in Original No.207/2017-18 dated 27.01.2018.



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9. By the aforesaid order, the third respondent imposed redemption fine under Section 125 of the Customs Act and penalty under Sections 112 (a) & 114 AA of the Customs Act, 1962 on the petitioners, as detailed below:-

i) I order confiscation of the five nos. of gold bangles and two nos. of gold chains totally weighing 371 gms and totally valued at Rs.9,90,236/- (Rupees Nine Lakhs ninety thousand two hundred and thirty six only) recovered from the possession of Shri.ChandrasegaramVijayasundaram under Section 111(d) and (1) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992. However, I allow the passenger an option to redeem the gold for re-export on payment of fine of Rs.4,00,000/- (Rupees four lakhs only) under Section 125 of the Customs Act, 1962.

v) I order confiscation of the four nos. of gold bangles and one gold chain totally weighing 293.5 gms and totally valued at Rs8,14,076/- (Rupees eight lakhs fourteen thousand and seventy six only) recovered from the possession of Smt.VijayasundaramMahalakhsmi under Section 111(d) and (1) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992. However, I allow the said passenger an option to redeem the gold for re-export on payment of fine of Rs.3,00,000/- (Rupees three lakhs only) under Section 125 of the Customs Act, 1962.

ix) I order confiscation of the two nos. of gold



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kadas and two nos. of gold chains totally weighing 322 gms and totally valued at Rs.8,59,450/- (Rupees eight lakhs fifty nine thousand four hundred and fifty only ) recovered from the possession of Shri.SomasundaramChandrasegaram under Section 111(d) and (1) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992. However, I allow the said passenger an option to redeem the gold for re-export on payment of fine of Rs.3,30,000/- (Rupees three lakhs thirty thousand only) under Section 125 of the Customs Act, 1962.

xiii) I order confiscation of the four nos. of gold bangles and one gold chain totally weighing 293.5 gms and totally valued at Rs.7,83,381/- (Rupees seven lakhs eighty three thousand three hundred and eighty one only) recovered from the possession of Smt.ChandrasegaramRajaluxmi under Section 111(d) and (1) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992. However, I allow the said passenger an option to redeem the gold for re-export on payment of fine of Rs.3,00,000/- (Rupees three lakhs only) under Section 125 of the Customs Act, 1962.

xvii) I order confiscation of the four nos. of gold kadas and one gold chain totally weighing 304 gms and totally valued at Rs.8,11,406/- (Rupees eight lakhs eleven thousand four hundred and six only) recovered from the possession of Smt.Raveendhiran Shanthadevi under Section 111(d) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act, 1992. However, I allow the said passenger an option to redeem the gold for re-export on payment of fine of Rs.3,00,000/- (Rupees three lakhs only) under



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Section 125 of the Customs Act, 1962”.

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The discussion which led to the above order in Original No.207/2017-18 dated 27.01.2018, reads as under:-

“I have gone through the written submissions and various case laws furnished by the learned advocate of the passengers. I have taken note of abandoning claim for liquor bottles made by the learned advocate on behalf of the passengers. I also find in the judgment of Hon'ble Supreme Court in the case of Directorate of Revenue Intelligence vs. Pushpa Lekehuma Tholani that the Hon'ble Supreme Court had observed that” However, it is made clear that the present conclusion is confined only to the disposal of this appeal”. I also find at the time of personal hearing, the advocate had stated that the intention of the passengers is not to import gold and they had brought. I also find the quantity of gold which the passengers have brought in i.e. 1584 grams which I consider above normal, a person could be wearing when undertaking pilgrimage. It is seen that though the passengers were given numerous chances to declare the gold, they have not declared the same and the fact remains that if the passengers have not been intercepted by the officers of customs, they would have walked away with the gold without payment of duty that was lawfully due to the Government. As such, the gold brought by the passenger becomes a non-bonafide baggage and as a result prohibited goods. I also observe that the gold brought by the passenger does not constitute to be the bonafide baggage which includes household goods and personal effects only. I also find that the passengers have not declared the gold to customs on their arrival. By indulging into these illegal



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activities the passengers have violated the various provisions of the Customs Act, 1962 read with Section 3 93) of the Foreign Trade (Development and Regulations) Act, 1992 mentioned at para (27) above rendering himself liable for penal action. However, I find that the passengers had not resorted to any ingenious concealment of the gold jewellery detained from them and had claimed the ownership of the same even during their initial interception and the same is also not disputed. Hence, I allow the passengers an option to redeem the gold seized from them for re-export on payment of a fine and penalty. I also observe that the 112 bottles of liquor (12 nos. of Black Label and 100 nos. of Chivas Regal) brought by the passengers above the permitted limits are non bonafide baggage and the same are also liable for confiscation under Section 111(d) and (1) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992”.

10. Aggrieved by the aforesaid order of the third respondent, the petitioners herein filed an appeal before the Appellate Commissioner. By a common Order in Appeals (Airport), C.Cus.1.No.69-73/2018 dated 27.04.2018, the above appeals were allowed with the following observations:-

“6. I have carefully gone through the facts of the case, impugned order and the grounds or appeal. I find from the records that the appellants being foreign nationals were wearing the gold jewelry in



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their prison and did not declare the gold jewelry brought by them to Customs as required under Section 77 *ibid* and was intercepted by the Customs officer at the exit point. Taking into consideration that there was no ingenious concealment and the ownership was also not disputed, the LAA confiscated the impugned gold and allowed for re-export on payment of fine and imposed penalty on the appellants. As per the discussions in the impugned order, it can be inferred that the gold jewelry belonged to the applicants. Whether gold jewelry brought by the passenger in a bonafide baggage is restricted for import or otherwise is determined from heading 98.03 of ITC (HS). The ITC (HS) heading 98.03 of the Foreign Trade Policy deals with the dutiable articles imported by a passenger in his baggage. As per this entry, the imports are restricted and allowed, if permitted under Customs Baggage Rules by saving clause 3(1)(h) of Foreign Trade (Exemption from application of Rules in Certain Cases) Order, 1993. As per this saving clause, the passenger's baggage is allowed to the extent admissible under the Customs Baggage Rules. In addition, as per proviso to saving clause import of gold in any form including ornaments, is also allowed as part of baggage by passengers of Indian origin or Indian passport holder, subject to the condition that the passenger bringing the gold is coming to India after a period of not less than six months of his stay abroad, quantity of gold imported shall not exceed 5 kgs and import duty of such gold shall be paid in convertible foreign currency. The appellants are not covered in proviso to saving clause, however, in view of the fact that the gold jewelry belonged to them is in quantities which can be for personal use, the same



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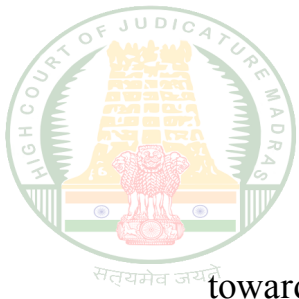
is not restricted for import in their bonafide baggage.

7. The appellant has referred to Hon'ble Kerala High Court order in W.P.(C) 6281 of 2014(1) filed by Vigneswaran Sethuraman in his grounds of appeal. In the case law cited by the appellant, the petitioner was a Srilankan national and was wearing the gold chain weighing 84 gms. In his voluntary statement he had stated that he was the owner of the impugned gold jewelry worn by him which was brought by him at Colombo. In the present case, I find that the appellants belong to the same family and were wearing the jewelry and came for a pilgrimage trip to India and the ownership was also not disputed. In view of my observation of the above judgement, I hold that the ratio of the above mentioned case is squarely applicable to the present case.

8. The facts of the case fall miserably in pointing out any attempt made by the appellants to smuggle the gold jewelry and therefore, confiscation of the same, albeit with an option for redemption on payment of redemption fine and penalty, is not in order and liable to be set aside.

9. I set aside the confiscation and penalties with consequential relief.”

11. Having succeeded in the appeal before the Appellate Commissioner, the petitioners wanted refund of the amount paid by them



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towards redemption and penalty, unaware of the fact that the respondents herein had filed a Revision Application before the first respondent under Section 129 DD of the Customs Act, 1962, against the order of the Commissioner (Appeals).

12. The petitioners had thus filed W.P.Nos.51,55,56, 58 and 60 of 2020. These writ petitions were disposed by this Court vide its common order dated 22.04.2021 and directed the first respondent to pass appropriate orders on merits in the revision application filed before the first respondent within a period of 12 weeks.

13. By the impugned order dated 14.07.2021, the first respondent reversed Order in Appeals Airport, C.Cus.1.No.69-73/2018 dated 27.04.2018 passed by the Commissioner of Customs (Appeals) and thus affirmed the order of the third respondent ordering confiscation of the gold & liquor and imposition of redemption fine and penalty under Section 125 and Section 112 (a) of the Customs Act, 1962. The first respondent further held that there was no necessity to impose separate penalty under Section 114 AA of the Customs Act, 1962.





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14. The learned counsel for the petitioners has heavily relied on the decision of the Single Judge of the Kerala High Court in **Vigneswaran Sethuraman, vs. Union of India Representated by the Secretary, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi 110 001 and another** (2014) 308 E.L.T 394 (Ker.).

15. It is submitted that though the aforesaid decision was rendered in the context of Baggage Rules, 1998, the ratio in the said decision was squarely applicable to the facts of the present case inasmuch as a foreign tourist coming to India, the petitioners were not required to make any declaration of jewelry worn or carried in person. In this case, a reference was made to para No.31 from the aforesaid order of the Kerala High Court read as under:-

“31. For the reasons stated above, I allow the writ petition, quash Ext. P3 order and direct the respondents to unconditionally return the gold chain confiscated as per Ext.P3 order in specie to the petitioner and to refund to him the sum of Rs.5000/- paid towards penalty, on the day the petitioner produces a certified copy of this judgement before the second respondent. No costs.”



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**WEB COPY** 16. The learned counsel for the petitioners also submits that the first respondent herein has wrongly relied on the Notification` issued under Section 25 of the Customs Act, 1962. It is submitted that the said Notification No.3/2012-Cus, dated 16.1.2012 was only applicable in the case of an “eligible passenger” as defined in the said notification and applied only to citizens returning from abroad after a long stay.

17. It is further submitted that the views of the learned Single Judge in **Union of India vs. Vigneswaran Sethuraman**, in W.P (C).No.6281 of 2014 was upheld by the First Bench of the Kerala High Court in W.A.No.694 of 2014 vide order dated 30.06.2014. It is further submitted that a review petition against the said decision in **R.P.No.641 of 2014** was also dismissed by the Division Bench of the Kerala High Court in **Union of India vs Vigneswaran Sethuraman**, 2015 (325) E.L.T. 573 (Ker.).

18. It is further submitted that the decision of the Kerala High Court has been followed by the Tribunals in several cases and since the



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first respondent is an Appellate Authority, it is bound by said decision of the Kerala High Court.

19. It is further submitted that the decision of the Hon'ble Supreme Court in **Directorate of Revenue Intelligence vs. Pushpa Lekhumal Tolani**, 2017 (353) E.L.T.129 ( S.C.) has already answered the issue. A specific reference was made to paragraph No.7 on the fact and reasoning given in para Nos.9 and 10.

20. It is further submitted that the decision of the Hon'ble Supreme Court in **Directorate of Revenue Intelligence vs. Pushpa Lekhumal Tolani**, 2017(353) E.L.T.129 ( S.C.), was referred by the Hon'ble Division Bench.

21. It is further submitted that the decision of the Supreme Court has laid down the ratio which has to be followed through in para no.13, where the Hon'ble Supreme Court has confined the ratio to the facts of the case.



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22. It is submitted that the prohibition under the ITC Policy is to be inferred only as per the Baggage Rules, 2016 in conjunction with saving Clause 3(1)(h) of Foreign Trade (Exemption from Application of Rules in Certain Cases) Amendment Order, 2017.

23. It is submitted that the confiscation of the jewelry of the respective petitioners and minors worn on person were outside the purview of the Customs Act 1962 and Baggage Rules, 2016 and the Notification referred to in the impugned order. Therefore, the impugned order upholding the confiscation and redemption fine and penalty, is liable to be set aside.

24. Opposing the prayer, the learned Senior Standing Counsel for the respondents submits that the Kerala High Court rendered its decision in the context of Baggage Rules, 1998 and the decision of the Tribunal referred was also rendered in the context of Baggage Rules, 1998.

Therefore, the reasoning given therein cannot be imported into the provisions of the Baggage Rules, 2016.



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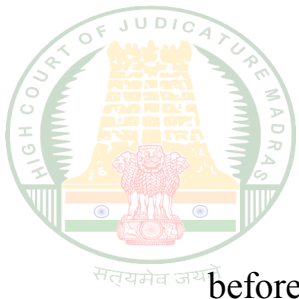
25. It is submitted that as per Rule 3 of the Baggage Rules, 2016 only certain categories of goods are allowed to be cleared duty free. Therefore, the question of the petitioners claiming any exemption from payment of duty under the Customs Act, 1962 or making declaration under the Baggage Rules, 2016 cannot be countenanced.

26. It is submitted that a Foreign Tourist is allowed duty free clearance of articles is confined only to *bonafide* baggage of such Foreign Tourist that is to say,

“a. used personal effects and travel souvenirs; and

b.articles other than those mentioned in **Annexure-I** upto the value of fifteen thousand rupees if carried on the person or in the accompanied baggage of the passenger.”

27. It is submitted that the provisions of the Baggage Rules, 2016 are very clear and therefore unless there was a proper declaration made



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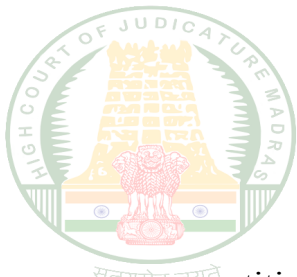
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before walking through the Green Channel, as a tourist, the petitioners cannot claim any immunity. It is further submitted that before an aircraft lands, the passengers are given a declaration form which is expected to be filled up by them for making a proper declaration before the “proper officer”.

28. In this case, no such declaration was filed by the petitioners. It is further submitted that the petitioners purchased 112 liquors bottles from the duty free shop beyond the permissible limit and attempted to smuggle into the country.

29. It is submitted that the petitioners were not bonafide tourist and therefore the impugned order passed by the first respondent reversing the order of the Commissioner of Customs (Appeals) and re-affirming the order of the 3<sup>rd</sup> respondent need not be interfered.

30. I have considered the arguments of the learned counsel for the



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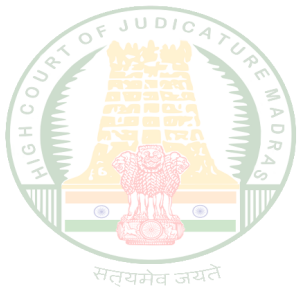
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petitioners and the learned Senior Standing Counsel for the respondents.

31. The points for consideration in this writ petition are (i) whether the respective petitioners were required to declare jewelry items worn by them on their person after disembarking from the aircraft or were entitled to walk through green channel without making any declaration before the proper officer of the Customs Department? and (ii) whether such an act attracted any penal provisions under the Customs Act, 1962?

32. Before proceeding further, it should be remembered that the scope of review under Article 226 of the Constitution of India is limited. Review under Article 226 of the Constitution of India is confined to the decision making process and not the decision *per se*.

33. *Prima facie*, no material irregularity is discernible in the decision making process adopted by the first respondent. The impugned order also does not suffer from any vices of violation of principle of natural justice. The order is also not unreasonable. Therefore, the present writ petition is liable to be dismissed.



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34. Since the decision of the Kerala High Court was cited by the learned counsel for the petitioners which has given its views in favour of the petitioners, I am duty bound to examine the same and see whether it can be applied to the facts of the present case for granting relief to the petitioners and whether the law declared therein is correct or not. Therefore, I shall briefly refer to the provisions of the Customs Act, 1962 and the Baggage Rules 2016 and the few other rules.

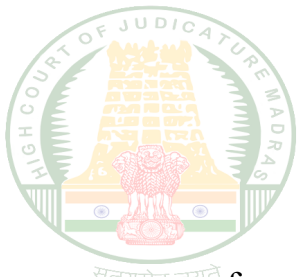
35. As per Section 77 of the Customs Act, 1962, an owner of a baggage is required to make a declaration of the content of the baggage for the purpose of clearing it before the proper Officer. Section 77 of the Customs Act, 1962, read as under:-

**Section 77: DECLARATION BY OWNER OF BAGGAGE.—**

The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer”.

36. As per Section 79 of the Customs Act, 1962, *bonafide* baggage





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of a passenger is exempted from payment of duty. Section 79 of the

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Custom Act, 1962 reads as under:-

**SECTION 79. BONA FIDE BAGGAGE**  
**EXEMPTED FROM DUTY.-**

(1) The proper officer may, subject to any rules made under sub-section (2), pass free of duty-

(a) any article in the baggage of a passenger or a member of the crew in respect of which the said officer is satisfied that it has been in his use for such minimum period as may be specified in the rules;

(b) any article in the baggage of a passenger in respect of which the said officer is satisfied that it is for the use of the passenger or his family or is a bona fide gift or souvenir; provided that the value of each such article and the total value of all such articles does not exceed such limits as may be specified in the rules.

(2) The Central Government may make rules for the purpose of carrying out the provisions of this section and, in particular, such rules may specify -

(a) the minimum period for which any article has been used by a passenger or a member of the crew for the purpose of clause (a) of sub-section (1);

(b) the maximum value of any individual article and the maximum total value of all the articles



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which may be passed free of duty under clause (b) of sub-section (1);

(c) the conditions (to be fulfilled before or after clearance) subject to which any baggage may be passed free of duty.

(3) Different rules may be made under sub-section (2) for different classes of persons.

37. The expression “ baggage” is defined in Section 2(3) of the Customs Act, 1962 as under:-

***Section 2(3): baggage” includes unaccompanied baggage but does not include motor vehicles”.***

38. As per Section 80 of the Customs Act, 1962, a proper officer, at the request of a passenger, can detain any article in a baggage of a passenger which are either dutiable or the import of which is prohibited, in respect of which, a true declaration has been made under Section 77 for being returned on his leaving India and if for any reason, the passenger is unable to collect the article at the time of leaving India, the article may be returned to him through any other passenger authorised by him who would be leaving India or as cargo consigned to him.



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39. The Board has also framed Baggage Rules, 2016 under Section 81 of the Custom Act, 1962. It replaced the 1998 Rules. Rule 3 of the Baggage Rules, 2016 which is relevant for this case reads as under:-

***RULE 3. PASSENGER ARRIVING FROM COUNTRIES OTHER THAN NEPAL, BHUTAN OR MYANMAR.*** - *An Indian resident or a foreigner residing in India or a tourist of Indian origin, not being an infant arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say,-*

- (a) used personal effects and travel souvenirs; and
- (b) **articles other than** those mentioned in **Annexure-I**, upto the value of fifty thousand rupees if these are carried on the person or in the accompanied baggage of the passenger :

***Provided*** that a tourist of Indian origin, not being an infant, shall be allowed clearance free of duty articles in his ***bona fide baggage***, that is to say,

- (a) used personal effects and travel souvenirs; and
- (b) articles other than those mentioned in Annexure-I, upto the value of fifteen thousand rupees if these are carried on the person or in the accompanied baggage of the passenger :

***Provided further*** that where the passenger is an



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*infant, only used personal effects shall be allowed duty free.*

***Explanation.*** - *The free allowance of a passenger under this rule shall not be allowed to pool with the free allowance of any other passenger.]*

40. **Annexure-I** to the Baggage Rule, 2016 reads as under:-

### **ANNEXURE-I**

(See Rule 3, 4 and 6)

1. Fire arms.
2. Cartridges of fire arms exceeding 50.
3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125 gms.
4. Alcoholic liquor or wines in excess of two litres.
5. **Gold or silver in any form other than ornaments.**
6. Flat Panel (Liquid Crystal Display/Light-Emitting Diode/Plasma) television.

41. The expression “tourist” is defined in Rule 2(1)(v) of Baggage

Rules, 2016 as follows:-

**“Rule2(1)(v):** *Tourist means a person not normally resident in India, who enters India for a stay of not more than six months in*



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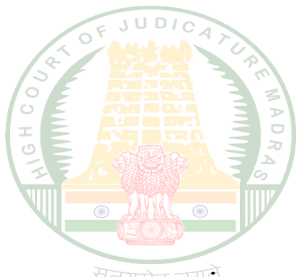
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*the course of any twelve months period for legitimate non-immigrant purposes”.*

42. As the petitioners are not tourist of Indian origin, proviso is not relevant for them. The expression “personal effect” is defined in Rule 2(vi) of the Baggage Rules, 2016 as follows:-

**Rule 2(vi)** *“personal effects” means things required for satisfying daily necessities but does not include jewellery”.*

43. Thus, jewellery items are not articles of personal effect. Jewellery are any other articles other than the articles of “personal effect”. Therefore, the petitioners being tourist within the meaning of Rule 2(1)(v) of the said Rules are governed by Sub Clause (b) of the Rule 3 of Baggage Rules, 2016. The said Rule read with Annexure I makes it clear that gold or silver ornaments upto a value of Rs.50,000/- (Rupees Fifty Thousand only) worn in person or carried on person are only freely



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importable.  
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44. Since the value of the gold ornaments worn in person of the respective petitioners exceeded Rs.50,000/- (Rupees Fifty Thousand only), it was incumbent on the part of the petitioners to have made proper declaration under **Customs Baggage Declaration Regulations, 2013** read with **Baggage Rules 2016**. These Rules apply to all passengers including tourist coming to India.

45. These Rules are clear. There is no scope for any ambiguity and confusion. If the value of gold and silver ornaments exceeded the value under the Rules, the petitioners were required to make appropriate declaration.

46. Import of gold or silver ornaments exceeding Rs.50,000/- (Rupees Fifty Thousand only) cannot be considered as part of *bonafide* baggage of tourist travelling to India. The petitioner should have paid customs duty, if they intended to deliver, sell them or gift them to a person in India. On the other hand, if they intended to retain them, they should



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them.

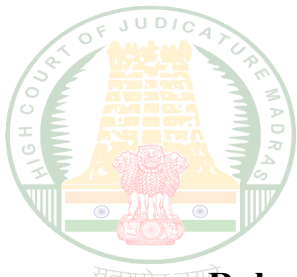
have requested the proper officer to detain them for being returned to

47. The petitioners should have followed Section 80 of the Customs

Act, 1962 which reads as under:-

“80. Temporary detention of baggage.—Where the baggage of a passenger contains any article which is dutiable or the import of which is prohibited and in respect of which a true declaration has been made under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India 1[and if for any reason, the passenger is not able to collect the article at the time of his leaving India, the article may be returned to him through any other passenger authorised by him and leaving India or as cargo consigned in his name]. “

48. Further, under Section 3, read with Section 4, of the **Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992)**, as amended by the **Foreign Trade (Development and Regulation) Amendment Act, 2010**, the Central Government amended the **Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993** and introduced **Foreign Trade (Exemption from Application of**



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**Rules in Certain Cases) Order, 2017.**

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49. Under Rule 3 of the aforesaid Rules, certain exemption are there. The petitioners were exempted from payment of duty only to the extent they were permitted under the Baggage Rules, 2016. For the purpose of the present case, reference is made to **Rule 3 (1)(h)** of the **Foreign Trade (Exemption from Application of Rules in Certain (Cases) Order, 2017** which reads as under:-

“(1)Noting contained in the Rules shall apply to the import of any goods;

(h) by the person as passenger baggage to the extent admissible under the Baggage Rules for the time being in force.

Provided that in the case of imports by a tourist, articles of high value whose re-export failing which such goods shall be deemed to be goods the import of which has been prohibited under the Customs Act, 1962”.

50. The reasoning of the learned single judge of the Kerala High Court in **Vigneswaran Sethuraman v. Union of India**, 2014 (308) E.L.T.



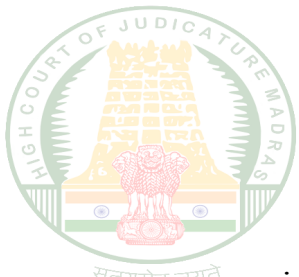


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394 (Ker) that *“The Customs Act, 1962 and the Baggage Rules, 1998 do not provide sufficient warning to foreign tourists entering India that wearing a gold chain is prohibited. The Act and the Rules do not even remotely indicate that a foreign tourist entering India cannot wear a gold chain on his person, in other words, foreign tourists entering India are in a boundless sea of uncertainty as to whether it is prohibited or not. As the Customs Act, 1962 and the rules framed thereunder contemplate confiscation and levy of penalty as also prosecution, the State has a duty to specify with a degree of certainty as to what is prohibited and what is not, without leaving it to the foreign tourist to*

*guess what is prohibited and what is not.”* cannot be accepted. Therefore, I am unable to subscribe to the views expressed by the Kerala High Court in **Vigneswaran Sethuraman v. Union of India**, 2014 (308) E.L.T. 394 (Ker.) to grant relief to the petitioner. In any event, the decision was rendered in the context of the Baggage Rule, 1998, whereas, the present



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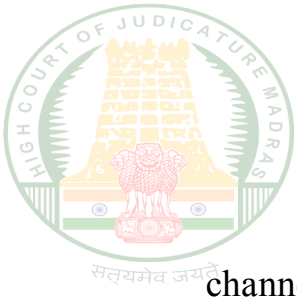
case is governed by the Baggage Rules, 2016.

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51. For the same reason, the decision of the Division Bench of Kerala High Court in **Union of India Vs Vigneswaran Sethuraman** vide its order dated 30.06.2014 in W.A.No.694 of 2014 affirming the views of the learned single judge in **Vigneswaran Sethuraman, vs. Union of India Representated by the Secretary, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi 110 001 and another**, (2014(308) ELT 394(Ker.) also cannot be followed in the present case. Therefore, the views of the Hon'ble Supreme Court in **Pushpa Lokmal Toramani** cited cannot be applied to the facts of the present case.

52. Further, one fails to understand, petitioners who claim to be pilgrims visiting an alien country would wear costly jewellery even if it be their customs.

53. The fact that the petitioners also purchased 112 bottles liquor beyond the permissible limits and attempted to walk though the green



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channel without making declaration also shows that the visit to India by the petitioners were not purely as pilgrimage alone.

54. The conduct of the petitioners attempting to walk through the green channel without proper declaration had raised serious doubts and thus proceedings initiated against the petitioners are in accordance with the provisions of the Customs Act, 1962. Therefore, I do not find any infirmity in the order passed by the first respondent.

55. For the reasons stated above, I dismiss this writ petition. No Costs. Consequently, connected miscellaneous petitions are closed.

08.06.2022

Index : Yes/No  
Internet : Yes/No  
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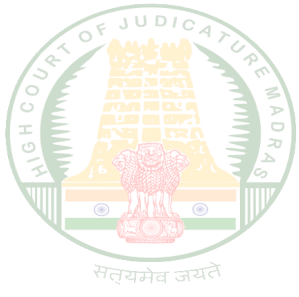
To



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1. The Principal Commissioner  
and Ex Officio Addl.  
Secretary to Govt. of India,  
Ministry of Finance, Department of  
Revenue, 8<sup>th</sup> Floor, Centre – 1,  
World Trade Centre, Cuffe Parade,  
Mumbai – 400 005.
2. The Principal Commissioner of Customs  
Commissionerate – I,  
Chennai Airport and Aircargo  
Complex, New Custom House,  
Meenambakkam, Chennai – 600 027.
3. The Joint Commissioner of Customs,  
(Adjudication – Air)  
Commissionerate – I,  
Chennai Airport and Aircargo  
Complex, New Customs House,  
Meenambakkam, Chennai – 600 027.
4. The Assistant Commissioner of Customs  
(Preventive – Refunds)  
Commissionerate – I,  
Chennai Airport and Aircargo  
Complex, New Customs House,  
Meenambakkam, Chennai – 600 027.



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**C.SARAVANAN, J.**

kkd

Pre-Delivery Order in  
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08.06.2022