

REGISTERED  
SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

---

F.No. 371/136/B/WZ/2018-RA | : Date of Issue 10.01.23  
F.No. 371/135/B/WZ/2018-RA | 33

---

ORDER NO. 01-02/2023-CUS (WZ)/ASRA/MUMBAI DATED 03.01.2023  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI. SHRAWAN KUMAR,  
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO  
THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS  
ACT, 1962.

---

**(i). F.No. 371/136/B/WZ/2018-RA**

Applicant : Shri. Amir Sohail Abdul Jilani

**(ii). F.No. 371/135/B/WZ/2018-RA**

Applicant : Shri. Abdul Qadir Zahir Khan.

Respondent : Pr. Commissioner of Customs, CSMI Airport, Mumbai.

Subject : Revision Applications filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal F.Nos.  
(i). MUM-CUSTM-PAX-APP-946/17-18 & MUM-CUSTM-  
PAX-APP-945/17-18 both dated 16.01.2018 issued  
through F.Nos. S/49-994/2015/AP & S/49-993/2015/ AP  
resp., passed by the Commissioner of Customs (Appeals),  
Mumbai-III.

**ORDER**

These two revision applications have been filed by Shri. Amir Sohail Abdul Jilani and Shri. Abdul Qadir Zahir Khan [herein after both referred to as the Applicants; alternatively, Shri. Amir Sohail Abdul Jilani is also referred to as Applicant No. 1 (A1) and Shri. Abdul Qadir Zahir Khan is referred to as Applicant no. 2( A2)] against the Orders-in-Appeals F.Nos. (i). MUM-CUSTOM-PAX-APP-946/17-18 & MUM-CUSTOM-PAX-APP-945/17-18 both dated 16.01.2018 issued through F.Nos. S/49-994/2015/AP & S/49-993/2015/ AP resp., passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Briefly stated facts of the case are that the Applicant No. 1 i.e. Shri Amir Sohail Abdul Jilani a domestic passenger, arrived at CSMI Airport, Mumbai onboard Air India Flight AI-343/08.05.2014 from Chennai and was intercepted by Customs Officers. Said AI flight no. AI-343/08.05.2014 had operated as an International Flight from Singapore-Chennai-Mumbai. Upon interception, Applicant no. 1 was queried as to whether he was carrying any dutiable / contraband goods to which he had replied in the negative. During the course of the personal search, it was noticed that A1 was wearing a belt with a rather heavy buckle and wrist watch purported to be made of gold. On questioning, A1 replied that the same had been handed over to him by A2 who too was travelling onboard the same flight. Thereupon, A2 was immediately intercepted and was queried as to whether he was carrying any dutiable / contraband goods to which he had replied in the negative. During the course of the personal search, it was noticed that A2 too, was wearing a belt with a rather heavy buckle and wrist watch purported to be made of gold. The said yellow metal purported to be gold recovered from A1, totally weighed 979 grams and was valued at Rs.

25,13,945. Similarly, the said yellow metal purported to be gold recovered from A2, totally weighed 937 grams and was valued at Rs. 25,13,945/-. Subsequently, the yellow metals were assayed by a Government Approved Valuer, who confirmed and certified that the two nos of belt buckles and two nos of wrist watch covers were made of gold.

2(b). On enquiry, the Applicant No. 2 had revealed that the total gold weighing 1916 grams belonged to him and had handed over the same to A1 onboard the domestic leg of the flight; that he had brought the gold for making a profit and admitted to having knowledge, possession, carriage, concealment, non-declaration and recovery of the gold.

3. The Original Adjudicating Authority i.e. Addl. Commissioner of Customs, CSMI Airport, Mumbai by a common Order-In-Original i.e. OIO No. ADC/ML/ADJN/159/2015-16 dated 11.09.2015 issued through S/14-5-368/2014-15Adjn - SD/INT/AIU/308/2014 AP'D' ordered for the absolute confiscation of the impugned gold i.e. one belt buckle and watch frame, together weighing 937 grams recovered and seized from A1, valued at Rs. 24,06,094/- and one belt buckle and watch frame, together weighing 979 grams recovered and seized from A2, valued at Rs. 25,13,945/- under Section 111(d), (l) and (m) of the Customs Act, 1962. Penalty of Rs. 2,50,000/- (Rupees Two lakhs Fifty thousand) each were also imposed on the Applicants No. 1 & 2 resp., under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, both the applicants filed appeals before the Appellate Authority i.e Commissioner of Customs (Appeals), Mumbai - III who vide separate orders i.e. Orders-In-Appeal F.Nos. (i). MUM-CUSTM-PAX-APP-

946/17-18 & (ii). MUM-CUSTOM-PAX-APP-945/17-18 both dated 16.01.2018 issued through F.Nos. S/49-994/2015/AP & S/49-993/2015/ AP resp., did not find it necessary to interfere in the OIO passed by the OAA and rejected both the Appeals.

5. Aggrieved with the above order, both the Applicants have filed these revision applications. It is noticed that both these revision applications are verbatim similar and the grounds of revision are as under;

5.01. that A2 had done some brokerage business in precious stones for a Thai National and had been paid Rs. 40,00,000/- for the same in the form of gold which were in the shape of belt buckles and wrist watches.

5.02. that A2 had told A1 to carry the gold and had arranged for the to & fro flight tickets from Chennai to Mumbai and had handed over the one belt buckle and wrist watch on board the flight A1-343 / 08.04.2014.

5.03. that the cases cited in the OIO i.e. Samynathan Murugesan vs. Commissioner - 2010-254-ELT-A15-SC, Abdul Razak vs. UOI - 2012-275-ELT-300 (Ker((DB) are not applicable to their case as the situation therein were different. In Samynathan Murugesan case, 7.075 kgs of gold were recovered from the TV set and in the Abdul Razak case, over 8 Kgs gold had been recovered from light mixie, grinder etc.; that in terms of Apex Court Order in the case of CCE, Calcutta vs. Alnoori Tobacco Products, 2004-170-ELT-135-SC, the applicants have contended that while applying the ratio of one case to that of the other, the factual situation should be borne in mind and one additional fact or different fact may make a difference between the conclusion in two case. . They have

emphasized that this position has been reiterated by Apex Court in Escorts Ltd vs. CCE, Delhi, 2004-173-ELT-113-SC and CC(Port), Chennai vs. Toyota Kirloskar, 2007-213-ELT-4-SC.

5.04. that A2 had claimed ownership of the gold and this had not been considered and redemption had been denied.; that the applicant relies on the undermentioned case laws;

- (a). Halithu Ibrahim Vs Commissioner of Customs [2002 -TIOL 195 CESTAT-MAD] TIOL-194].
- (b). Felix DorexFernnees vs Commissioner of Customs [2002 CESTAT MUM]
- (c). Yakub Ibrahim Yusuf Vs CC, Mumbai 2011 (263) ELT 685 (Tri-Mumbai)
- (d). RejiCheriyam Vs CC, Kochi
- (e). P.Sinnasamy Vs CC, Chennai 2007 (220) ELT 308 (Tri-Chennai)
- (f). Krishnakumari Vs CC, Chennai 2008 (229) ELT 222 (Tri-Chennai)
- (g). S.Rajagopal Vs CC, Trichy 2007 (219) ELT 435 (Tri-Chennai)
- (h). M Arumugam Vs CC, Tiruchirapalli, 2007 (220) ELT 311 (Tri-Chennai)
- (i). Shaik Jamal Basha V. Government of India (1997(91) E.L.T. 277 (A.P.)
- (j). Commissioner of Customs (Preventive) Vs. Uma Shankar Verma (2000 (120) E.L.T. 322 Cal.)
- (k). T.Elavarasan vs The Commissioner of Customs
- (l). VP Hameed Vs Collector of Customs, Bombay (1994 (73) ELT 425)
- (m). Kader Mydin vs Commissioner of Customs (Preventive), West Bengal (2001 (136) ELT 758):-
- (n). Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai (2008(230) ELT 305)
- (o). Vattakkal Moosa Vs Collector of Customs, Cochin (1994 (72) ELT 473 (GOI)
- (p). Order no 426/04 issued vide file no 380/57/8/2004-RA-Cus dated 21 9-2004

(q). In the case of K. Kuttiyandi v. Commissioner of Customs, Chennai (Appeal No. C/29/2000), CESTAT Bench

(r). Gauri Enterprises vs. Commissioner of Customs, Pune [2002-145-ELT-705-Tri-Bang]

(s). In the case of: MOHD..ZIA UL HAQUE before Government of India Revision Order no. 443/12-Cus dated 8-8-12; [2014-(214)-ELT-849-(GO1)].

5.05. that the penalty is harsh and heavy compared to the value of the gold.

5.06. that A1 did not have any claim over the gold and had committed the mistake since he was unemployed and lured for earning money and also had been attracted at travelling by flight. A2 claimed ownership of the entire gold.

Under the circumstances, A1 has prayed to the revision authority for a reasonable order, a reasonable penalty or to pass any other order as deemed fit.

Under the circumstances, A2 has prayed to the revision authority for redemption of the gold on a reasonable fine and penalty or to pass any other order as deemed fit.

6. Both A1 and A2 have filed application for condonation of delay. Both the Revision application had been filed by the applicants on 17.04.2018

7(a). Personal hearing in the case of A1 was scheduled for 03.08.2022. Shri. Prakash Shingrani, Advocate appeared for personal hearing on 03.08.2022 and reiterated earlier submissions. He submitted that applicant brought gold for personal use, quantity was small, he is not habitual offender, he requested to allow redemption of goods on RF and penalty.

7(b). Personal hearing in the case of A2 was scheduled for 14.11.2022. Shri. Prakash Shingrani, Advocate appeared for personal hearing on 14.11.2022 and submitted that both the applicants have brought small quantity of gold articles and are not habitual offenders. He requested to release the gold articles on nominal fine and penalty.

8. On the issue of condonation of delay, Government notes that the revision application has been filed on 17.04.2018. The OIA was issued on 16.01.2018. Applicants have claimed that the OIAs were received by them on 16.01.2018, itself. Accordingly, the applicant was required to file the revision application within 3 months i.e. by 16.04.2018. Government notes that an extension period of 3 months was available to the applicant which would have expired on 15.07.2018. Government notes that the revision application was filed on 17.04.2018 which is well within the extension / condonable period i.e. 3 months + 3 months. Therefore, prayer for condonation of delay is accepted and Government condones the delay.

9.1. The relevant sections of the Customs Act are reproduced below :

**Section 2(33)**

“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with”

**Section 125**

Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it *may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods,*

*give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

9.2. It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only by the banks authorized by the RBI or by others authorized by DGFT and to some extent by passengers. Therefore, gold which is a restricted item for import but which was imported without fulfilling the conditions for import becomes a prohibited goods in terms of Section 2(33) and hence it liable for confiscation under Section 111(d) of the Customs Act. It is undisputed that Section (l) and (m) are also applicable in this case as the applicant had adopted innovative method and it was not included in the declaration. Therefore, the gold was also liable for confiscation under these Sections.



10.1. The Hon'ble High Court Of Madras, in the case of Commissioner Of Customs (Air), Chennai-I V/s 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 v. 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”.

10.2. Further, in para 47 of the said case the Hon'ble High Court has observed “*Smuggling in relation to any goods is forbidden and totally prohibited. Failure to check the goods on the arrival at the customs station and payment of duty at the rate prescribed, would fall under the second limb of section 112(a) of the Act, which states omission to do any act, which act or omission, would render such goods liable for confiscation.....*”. Thus failure to declare the goods and failure to comply with the prescribed conditions has made the impugned gold “prohibited” and therefore liable for confiscation and the Applicants thus liable for penalty.

11. A plain reading of the Section 125 shows that the Adjudicating Authority

is bound to give an option of redemption when goods are not subjected to any prohibition. In case of prohibited goods, such as, the gold, the Adjudicating Authority may allow redemption. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods. This exercise of discretion will depend on the nature of the goods and the nature of the prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as conditions of import have not been satisfied, may not be harmful to the society at large. Thus, adjudicating authority can allow redemption under Section 125 of any goods which are prohibited either under the Customs Act or any other law on payment of fine but he is not bound to so release the goods.

12. Hon'ble Supreme Court in case of M/s. Raj Grow Impex [*CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021*] has laid down the conditions and circumstances under which such discretion can be used. The same are reproduced below.

*71. Thus, when it comes to discretion, the exercise thereof has to be guided by law; has to be according to the rules of reason and justice; and has to be based on the relevant considerations. The exercise of discretion is essentially the discernment of what is right and proper; and such discernment is the critical and cautious judgment of what is correct and proper by differentiating between shadow and substance as also between equity and pretence. A holder of public office, when exercising discretion conferred by the statute, has to ensure that such exercise is in furtherance of accomplishment of the purpose underlying conferment of such power. The requirements of reasonableness,*

*rationality, impartiality, fairness and equity are inherent in any exercise of discretion; such an exercise can never be according to the private opinion.*

*71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion either way have to be properly weighed and a balanced decision is required to be taken.*

13. Government further observes that there are a catena of judgements, over a period of time, of the Hon'ble Apex / High Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

- a) In the case of Commissioner of Customs, Aliganj, Lucknow vs. Rajesh Jhamatmal Bhat, [2022(382) E.L.T. 345 (All)], the Lucknow Bench of the Hon'ble High Court of Allahabad, has held at Para 22 that "*Customs Excise & Service Tax Appellate Tribunal Allahabad has not committed any error in upholding the order dated 27.08.2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act.*"
- b) The Hon'ble High Court of Judicature at Madras, in the judgment in the case of Shik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad)] upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.
- c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T, 399 (Ker.)] has,

observed at Para 8 that *“The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any such person from whom such custody has been seized...”*

- d) Also, in the case of Union of India vs Dhanak M Ramji [2010(252)E.L.T. A102(S.C)], the Hon’ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon’ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passenger.

14.1. In the instant case, it is noted that quantity of gold with both applicants was not large or commercial, it was in the form of articles made up of gold, applicants are not habitual offenders. In the instant case, the impugned gold articles had been worn by the applicants i.e. it was found on their person. The gold had been innovatively converted into articles i.e. belt buckles and wrist watch frames. Also, considering the cases cited above, Government finds that this is a case of non-declaration of gold. In these circumstances, Government finds that the absolute confiscation of the gold leading to dispossession of applicants is harsh and excessive.

14.2. Government finds that all these facts have not been properly considered by the lower authorities while absolutely confiscating the articles made of gold i.e. 2 nos of belt buckles and 2 nos of wrist watch frames, totally weighing 1916 grams and valued at Rs. 49,20,039/- recovered from both the applicants. Also, observing the ratios of the judicial pronouncements cited above, Government arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case. Therefore, the Government maintains confiscation of the said gold articles but allows the

impugned gold articles i.e. two belt buckles and two wrist watch frames, to be redeemed on payment of a redemption fine.

15(a). The Government finds that the penalty of Rs. 2,50,000/-, imposed on A2 under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed by him. A2 had lured A1 and had passed on the articles made of gold to him. Therefore, Government does not find it necessary to interfere in the quantum of penalty imposed on A2 by the lower authorities.

15(b). With regard to the penalty of Rs. 2,50,000/- imposed on A1, it is to be considered that A2 has claimed ownership of the gold and had lured A1 to be his accomplice. Under the circumstance, Government finds that the penalty imposed on A1 is harsh and is inclined to reduce the same.

16. In view of the above, the Government modifies;

(i). the OIA bearing F.No. MUM-CUSTOM- PAX-APP-946/17-18 dated 16.01.2018 passed by AA in respect of A1. The Government sets aside the absolute confiscation of the belt buckle and wrist watch frame, made of gold and together weighing 937gms and valued at Rs. 24,06,094/- ordered by the OAA and upheld by the AA and grants an option to redeem the same on payment of a redemption fine of Rs. 4,60,000/- (Rupees Four Lakhs Sixty Thousand only. As discussed above, the penalty of Rs. 2,50,000/- imposed by OAA and upheld by AA is reduced to Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only);

(ii). the OIA bearing F.No. MUM-CUSTOM- PAX-APP-945/17-18 dated 16.01.2018 passed by AA in respect of A2 to the extent of absolute confiscation of the gold i.e. belt buckle and wrist watch frame made of gold and collectively

weighing 979 gms and valued at Rs. 25,13,945/- and grants an option to the applicant no. 2 to redeem the same on payment of a redemption fine of Rs. 5,00,000/- (Rupees Five Lakhs only). As discussed above, the penalty of Rs. 2,50,000/- imposed on A2 by OAA and upheld by AA is sustained.

17. Accordingly, both the revision applications i.e. F.No. 371/135/B/WZ/2018-RA filed by A2 and the revision application F.No. 371/136/B/WZ/2018-RA filed by A1 is disposed of on the above terms.

*Shrawan*  
3/11/23  
( SHRAWAN KUMAR )

Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 01-02/2023-CUS (WZ) /ASRA/MUMBAI DATED 03.01.2023

To,

1. Shri. Amir Sohail Abdul Jilani, 163/9, Western Railway Colony, Bandra West, Mumbai - 400 050.
2. Shri. Abdul Qadir Zahir Khan, D.No. 65AB Building, No. 17, Shiv Lal Moti Mansion, D.B. Marg, Mumbai Central, Mumbai - 400 008.
3. The Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal - 2, Sahar, Andheri East, Mumbai - 400 059.

Copy to:

4. Shri. Prakash Shingrani, Advocate, 12/334, Vivek New MIG Colony, Bandra East, Mumbai - 400 051.
5. Sr. P.S. to AS (RA), Mumbai.
6. File Copy.
7. Notice Board.