

REGISTERED  
SPEED POST



सत्यमेव जयते

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. 371/156/B/2022-RA / *MD*

Date of issue: 31.01.2024

ORDER NO. 100 /2024-CUS (WZ)/ASRA/MUMBAI DATED 30.1.2024  
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.

Applicant : Mr. Mohammed Imran Qureshi  
Respondent : Pr. Commissioner of Customs, CSMI, Mumbai  
Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-1159/2021-22 dated 06.12.2021 [Date of  
issue: 07.12.2021] [F. No. S/49-1101/2020] passed by the  
Commissioner of Customs (Appeals), Mumbai Zone-III.

ORDER

This Revision Application is filed by Mr. Mohammed Imran Qureshi (here-in-after referred to as the 'Applicant') against the Order-in-Appeal (OIA) No. MUM-CUSTM-PAX-APP-1159/2021-22 dated 06.12.2021 passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that on 10.09.2018, the officers of Customs, Chhatrapati Shivaji Maharaj International Airport, Mumbai, intercepted the Applicant, who had arrived by Flight No. EK-508 from Dubai. A search of the rest room at the airport, used by the applicant had resulted in recovery of 10 gold bars totally weighing 1166 grams and valued at Rs.32,56,842/- kept in one mobile flip cover packet. The applicant admitted that he had carried the said recovered gold from Dubai and hid it inside the toilet paper holder mounted on the wall of 4<sup>th</sup> toilet in the gents washroom located near the conveyor belt. The officers also recovered one Samsung brand Smart Television set valued at Rs.15,000/-. A seizure of the recovered goods was effected under a panchnama and after completion of investigations, a show cause notice dated 05 03.2019 was issued to the applicant.

3. The case was adjudicated in due course and the Original Adjudicating Authority (OAA) i.e., Additional Commissioner of Customs, CSMI Airport, Mumbai, vide Order-in-Original (OIO) No. ADC/SKR/ADJN/53/2020-21 dated 28.07.2020 ordered absolute confiscation of the seized gold totally valued at Rs.32,56,842/- and Samsung brand Smart Television set valued at Rs.15,000/- under Section 111(d) of the Customs Act, 1962. The OAA also imposed a penalty of Rs.8,00,000/- under Section 112(a)(i) ibid.

4. Aggrieved, the Applicant filed an appeal before the Appellate Authority (AA) who vide impugned OIA upheld the order of the OAA.

5. Hence, the Applicant has filed the instant revision application on the following grounds:

- a) that the order passed by the appellate authority was bad in law and unjust; that the OIA has been passed without due consideration to the documents on record and facts of the case; that the goods were neither restricted nor prohibited; that no previous case has been registered against applicant; that the Respondent has come to the conclusion that the acts and/or omissions on the part of the Applicant was to evade Customs duty; that the evasion of Customs duty can be done only in respect of dutiable goods and not prohibited goods; that once the department or respondent accepts that the goods are dutiable, the option of redemption of goods as provided under section 125 of the Customs Act, 1962 will have to be given to the Applicant; that various judgements passed by the Apex Court, High Courts, Tribunal, GOI have held that gold was neither restricted nor prohibited and therefore it should not be confiscated absolutely.
- b) the applicant has relied upon the following case laws:-
- (i). Hargovind Das K Joshi v/s. Collector of Customs [1992 (61) ELT 172 SC], Absolute confiscation of goods without considering question of redemption on payment of fine although having discretion to do so under Section 125, matter remanded back.
- (ii). UOI v/s. Dhanak M Ramji in W.P. No. 1397 with 1022 of 2009 dated 04.08.2009 (2009-248-ELT-127-Bom.). Goods not prohibited but became prohibited due to violation of law, discretion to release on payment of redemption fine, is maintainable.
- (iii). T. Elvarasan v/s. Commr. Of Customs (Airport), 2011-266-ELT-167-Tri-Madras on the issue of gold chains brought from Singapore and seized on the ground of non-declaration on arrival; passenger living abroad for more than 6 months and entitled to import gold; gold not prohibited item option to redeem the goods; impugned gold ordered to be released provisionally subject to adjudication proceedings.
- (iv). Yakub Ibrahim Yusuf v/s. Commissioner of Customs, Mumbai [Final Order No. A/362/2010-WBZ-II/(CSTB) dated 28.10.2010 in Appeal no. C/51/1996-Mum] [2011-263-ELT-685-Tri-Mumbai]. Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to

health, welfare or morals of people as whole and makes them liable to absolute confiscation.

(v). Mohini Bhatia vs. Commr. of Customs [1999-106-ELT-485-Tri-Mumbai on prohibited goods and restricted goods. Gold was not included in the part II of restricted item.

(vi). Hon'ble Tribunal Bombay in the case of Sapna Sanjeev Kohli vs. Commr. Of Customs, Airport, Mumbai (2008-230-ELT-305-Tri-Mumbai), Plea of no intention of clearing goods without payment of duty not tenable; Absolute confiscation of gold jewellery not warranted.

(vii). Alfred Menezes v/s. Commissioner of Customs (Mumbai) [2011 (236) ELT 587 (Tri-Mumbai)], Section 125(1) ibid clearly mandates that it is within the power of the adjudicating authority to offer redemption of goods even in respect of prohibited goods.

(viii). Commissioner of Customs, Kandla v/s. Deluxe Exports. Order nos. 2064-2076/2000-WBZ/C-II dated 25.07.2000 in Appeals No. C/368, 554 to 564/2000. Adjudication Authority not to decide or investigate as to who is the owner of the goods.

On the above grounds, the Applicant has prayed to allow redemption of the seized gold under section 125 of the Customs Act,1962, substantially reduce the personal penalty or to pass any other order as deemed fit

6. Personal hearing in the case was held on 19.10.2023. Shri N.J. Heera, Advocate appeared for the personal hearing and submitted that the applicant has brought some gold. He further submitted that the applicant had retracted Original statement written by the Customs Officers. He requested to allow redemption of gold on nominal fine and penalty. No one appeared for the personal hearing on behalf of the Respondent.

7. The Government has gone through the facts of the case. The Applicant had used a very ingenious method to smuggle the gold into the country. The packet containing the impugned gold bars was cleverly left in the toilet by the applicant. The same was left behind for some accomplice to carry it away. It suggests that the applicant was a part of a syndicate which was involved in smuggling the gold clandestinely into the country. But for the alertness of the staff of Customs, the gold would have escaped detection. The quantum of gold indicates that the same was for commercial use. The applicant in his statement

to the department has submitted that the gold does not belong to him. The Applicant did not declare the gold bars as required under section 77 of the Customs Act, 1962. The quantity of gold recovered was ingeniously concealed to avoid detection. The confiscation of the gold is therefore justified and the Applicant has rendered himself liable for penal action for his act of omission and commission.

8. Government observes that 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. Thus 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".

9. 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 Applicant thus liable for penalty.

10. Once goods are held to be prohibited, Section 125 still provides discretion to consider release of goods on redemption fine. 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.”*

11 Government observes that the applicant had used a very ingenious method to smuggle the impugned gold i.e. the gold was concealed in a packet, cleverly placed in a toilet paper holder which was left in the toilet in the airport. The method used indicates that there was an accomplice who would have carried away the gold bars. This indicates that the applicant was part of a syndicate engaged in the smuggling of gold and evading payment of duty. The method adopted reveals that the applicant had connived with an intention to evade payment of duty. It also revealed his criminal bent of mind and a clear

intention to evade duty and smuggle the gold into India. The seizure of the impugned gold had taken place on 10.09.2018 and the applicant's statement was recorded on 11.09.2018. The retraction dated 07.01.2019 filed after nearly 04 months is just mechanical in nature and was not done at the first opportunity. The Order-in-Original clearly mentions that the applicant had not made himself available during the investigations. The mobile number of Raju bhai, the person at whose behest the impugned gold was brought by the applicant, was found to be registered in the name of some other person, summons to whom were returned undelivered by the postal authorities with remarks "Not found". Investigations had revealed that the applicant was booked earlier also in smuggling of gold bars weighing 516 grams in the year 2015 and again in the year 2018 for bringing 126 grams of gold. Pictures of duty roster of Customs batches were found in the image gallery of the applicant. The quantum of gold seized was large and was commercial in nature. Government notes that all these have been considered by the original adjudicating authority and due weightage has been given to the factual position while passing the order.

12. Though the option to allow redemption of the seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment being clever and ingenious with a clear attempt to smuggle the gold bars totally weighing 1166 grams, it is a fit case for absolute confiscation which would act as a deterrent to such offenders. Thus, taking into account the facts on record and the serious and grave and novel modus operandi, the original adjudicating authority had rightly ordered the absolute confiscation of the impugned gold. But for the intuition and the diligence of the Customs Officers, the gold would have passed undetected. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.". The redemption of the gold will encourage such concealment as, if the gold is not detected by the Custom authorities the passenger gets away

with smuggling and if not, he has the option of redeeming the gold. Such acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked

13. Government notes that the penalty of Rs. 9,00,000/- imposed under Section 112 (a) and (b) of the Customs Act, 1962 by the original adjudicating authority is commensurate with the omissions and commissions committed and Government is not inclined to interfere in the same.

14. In view of the above, the Government upholds the impugned Order-in-Appeal and rejects the instant Revision Application.

  
(SHRAWAN KUMAR)

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

ORDER NO. 100 /2024-CUS (WZ)/ASRA/MUMBAI DATED 30 11 24

To,

1. Mr. Mohammed Imran Qureshi,  
R.No.204, 196, Khoja Chawl,  
G. Bazar, M.A.Road,  
Nagpada, Mumbai - 400 008.
2. The Pr. Commissioner of Customs,  
Terminal-2, Level-II,  
Chhatrapati Shivaji Maharaj International Airport,  
Sahar, Mumbai - 400 099.

Copy to:

1. Shri. N.J Heera, Advocate,  
Nulwala Bldg, Ground Floor,  
41, Mint Road, Opp. GPO,  
Fort, Mumbai - 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard file.