

REGISTERED SPEED POST

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 380/180/B/16-RA

/ 27/8/2

Date of Issue 05/12/2018

ORDER NO. <sup>1001</sup> /2018-CUS (WZ) / ASRA / MUMBAI/ DATED 30.11.2018  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR  
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL  
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD  
OF THE CUSTOMS ACT, 1962.

Applicant : Commissioner of Customs, Pune

Respondent : Shri Ajaz Abdul Kadar Jumani

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. PUN-  
EXCUS-001-APP-131-16-17 dated 29.08.2016 passed by  
the Commissioner(Appeals-I), Central Excise, Pune



**ORDER**

This revision application has been filed by the Commissioner of Customs, Pune(hereinafter referred to as the "Applicant") against the Order-in-Appeal No. PUN-EXCUS-001-APP-131-16-17 dated 29.08.2016 passed by the Commissioner(Appeals-I), Central Excise, Pune in respect of Shri Ajaz Abdul Kadar Jumani(hereinafter referred to as the "Respondent").

2. Briefly stated, the facts of the case are that the respondent on arrival at Pune International Airport from Dubai by Spice Jet Flight No. SG-52 on 18.05.2015 at 03.45 was intercepted by the Customs Officers when he attempted to pass through the Green Channel after filing a Nil Customs Declaration. On suspicion a personal search and screening of his trolley was carried out in the presence of two independent witnesses. The search revealed that gold in the form of foil weighing 348.66 gms was pasted under one layer of ply in the trolley bag with the intent to smuggle the gold and evade customs duty. After investigation, a show cause notice dated 16.11.2015 was issued to the respondent calling upon him to explain why the said gold foil under seizure totally weighing 348.66 gms valued at Rs. 9,75,551/-(Rupees Nine Lakhs Seventy Five Thousand Five Hundred and Fifty One Only) should not be confiscated under Section 111(d), (l) & (m) and penalty should not be imposed on him under Section 112(a), (b) and Section 114AA of the Customs Act, 1962.

3. The adjudicating authority adjudicated the case vide his Order-in-Original No. PUN-CUSTM-000-ADC-04/16-17 dated 28.04.2016 ordering absolute confiscation of the gold foil weighing 348.66 gms under Section 111(d), Section 111(l), Section 111(m), imposed personal penalty of Rs. 2,00,000/- under Section 112 and Rs. 1,00,000/- under Section 114AA of the Customs Act, 1962.

4.1 Aggrieved by the Order-in-Original, the respondent preferred appeal before the Commissioner(Appeals). The Commissioner(Appeals) observed that the intention behind the provisions of Section 125 of the Customs Act, 1962 for absolute confiscation was to absolutely confiscate goods such as arms, ammunition, addictive substances viz. drugs which would cause danger to health, welfare or morals of people as a whole. He found that the release of the gold would not cause any danger or detriment to public health. He relied upon the order of the Revisionary Authority in the case of Mohd Zia Ul

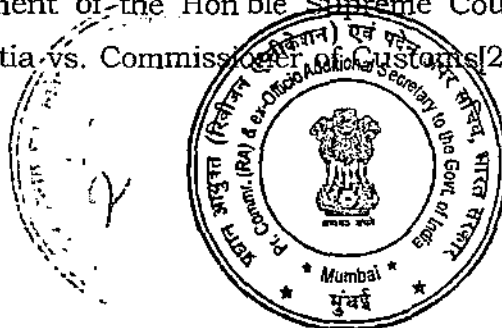


Haque[2014(314)ELT 849(GOI)] wherein it was observed that there is a distinction between "restriction" and "prohibition" and it was held that prohibition relates to goods which cannot be imported by anyone such as arms, ammunition, addictive substances viz. drugs. He further averred that these provisions would not apply to a case where the import/export of goods is permitted subject to certain conditions or a certain category of persons and which are ordered to be confiscated for the reason that the condition has not been complied with. In such a situation, the release of such goods which have been confiscated would not cause any danger or detriment to public health.

4.2 The Commissioner(Appeals) therefore allowed redemption of the 348.66 gms of gold foil valued at Rs. 9,75,551/- on payment of fine of Rs. 2,25,000/- in lieu of confiscation under Section 125 of the Customs Act, 1962 while upholding the penalty imposed by the adjudicating authority; i.e. the Additional Commissioner of Customs, Pune.

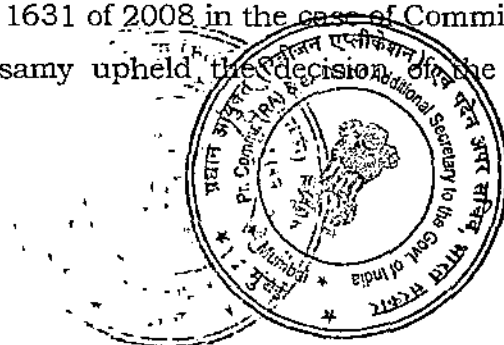
5. The Department found that the Order-in-Appeal passed by the Commissioner(Appeals) was not proper and legal for the following reasons:

- (i) The finding of the Commissioner(Appeals) that the release of the confiscated goods would not cause any danger or detriment to public is not correct as such activity of smuggling in gold strikes at the financial health of the nation. A higher rate of duty has been imposed on gold to discourage its import and to rein in the current account deficit.
- (ii) Allowing such commercial quantity of gold carried in an ingenious manner to be redeemed amounts to smuggling and release of such gold on redemption fine would cause injury to the economy of the country by uncontrolled import or export of gold or silver.
- (iii) Smuggling in relation to any goods is forbidden and totally prohibited. Failure to declare the goods on 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 stipulates that omission to do any act, such act or omission would render such goods liable to confiscation under Section 111 of the Customs Act, 1962.
- (iv) In the judgment of the Hon'ble Supreme Court in the case of Om Prakash Bhatia vs. Commissioner of Customs[2003(155)ELT 423(SC)],



it has been held that prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled, it may amount to prohibited goods.

- (v) In the judgment of the Hon'ble Supreme Court in the case of Sheikh Mohd. Omer vs. CC[AIR 1971 SC 293], it was contended that the expression "prohibition" used in Section 111(d) must be considered as total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955.
- (vi) Board Circular No. 495/5/92-Cus. VI dated 10.05.1993 instructs that in case of gold seized for non-declaration by the passenger, except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question; e.g. piece of gold kept in a medicine bottle will be treated as concealment while a bangle/necklace worn by a passenger may not be considered as concealment, if it was easily visible no option to redeem the same on payment of redemption fine is to be given under Section 125 of the Customs Act, 1962.
- (vii) In the Revision Application filed by Neesha Ram Jagtani[2014(312)ELT 967(GOI)], the Revisionary Authority held that the benefit of exemption would not be available in cases where the goods were attempted to be smuggled into India. Therefore, the order for confiscation of goods and imposition of penalty cannot be assailed.
- (viii) In the Revision Order No. 04/2016-Cus dated 28.01.2016 in the case of Shamsuddin Malik and Revision Order No. 26/2016-Cus dated 3.03.2016 in the case of Haja Mohideen Abdul Jaleel, the Revisionary Authority had upheld the absolute confiscation of gold. Similarly, in the Revision Order No. 31/2016-Cus dated 21.03.2016 in the case of Mohammed Rafick Bin Samsudeen, the Revisionary Authority had held that goods cannot be redeemed to the carrier under Section 125 of the Customs Act, 1962 and would be liable for absolute confiscation.
- (ix) The Hon'ble Madras High Court in its judgment dated 23.08.2016 in CMA No. 1631 of 2008 in the case of Commissioner of Customs(Air) vs. P. Sinnasamy upheld the decision of the adjudicating authority to



absolutely confiscate the smuggled gold and held that the discretion exercised by the competent authority to deny release was in accordance with law and the interference by the Tribunal was against law and unjustified.

6. The applicant and the respondent were both granted opportunity to be heard. Ms. Sudha Iyer, Superintendent(AIU) appeared on behalf of the Department and reiterated the submissions in the Revision Application filed by the Department. It was pleaded that the impugned Order-in-Appeal be set aside and the Revision Application be allowed. On the other hand, Shri Vinayak Kalgekar, Advocate and Shri S. P. Shinde, Advocate appeared on behalf of the respondent. The respondent reiterated the submissions filed in the written submissions & submissions filed at the time of hearing alongwith order of Commissioner(Appeals). It was pleaded that the Order-in-Appeal be upheld and the revision application be dismissed.

7. The Government has gone through the case records. The respondent was carrying a trolley bag which on screening showed the presence of some suspicious metal in the form of a black strip all around the bottom portion of the bag. The bottom portion of the trolley bag was then cut open. Thereupon, one yellow coloured metal foil pasted under one layer of ply was recovered. On being asked, the respondent accepted that the metal was gold foil. On examination by the Govt. approved valuer the yellow metal foil was found to be made of pure gold having purity of 24K, weighing 348.66 gms and valued at Rs. 9,75,551/-.

8. It is observed that the respondent had attempted to clear himself through the Green Channel after filing a "Nil" Customs Declaration. In view of the non-declaration and the fact of having admitted carriage and possession of the impugned goods, it was established that the respondent had failed to declare the gold foil to the customs as required under Section 77 of the Customs Act, 1962. It was therefore evident that the respondent intended to evade duty as he had not made true and correct declaration of the dutiable goods possessed by him.



9. The Baggage Rules as amended, entitle a passenger to bring articles other than those mentioned in Annexure-I to the Appendix upto a value of Rs. 35,000/- whereas the respondent had brought goods i.e. 348.66 gms of gold foil valued at Rs. 9,75,551/- which was much higher than the permissible limit. Moreover, the respondent had opted for the Green Channel instead of declaring the dutiable goods before the Customs Officer at the Red Channel.

10. In terms of the Baggage Rules, it was mandatory for a passenger to declare the goods in excess of admissible limits being imported and their value. Any goods imported in contravention of the restrictions imposed and non-declaration or mis-declaration thereof would render such goods liable to confiscation and the passenger would be liable for penal action for his acts of omission or commission.

11. The Commissioner(Appeals) has gone by the various judgments which hold that the option of redeeming the goods on payment of fine as provided for under Section 125 of the Customs Act, 1962 should invariably be extended. However, this is clearly a discretionary power vested in the proper officer. In the present case, the respondent has attempted to smuggle in a huge quantity of gold. The gold was concealed in an ingenious manner. It was concealed under one layer of ply in the form of a yellow coloured metal foil on the bottom portion of the trolley bag which the respondent was carrying. Needless to say, under normal circumstances, the gold would have escaped the notice of the officers. It was a carefully planned operation to evade payment of customs duty. Moreover, the respondent had admitted in his statement that the gold was being carried by him and also initially admitted that he had been offered Rs. 10,000/- to carry the gold from Dubai to India.

12. The Government observes that the respondent had failed to file correct declaration, that he had admitted to being aware of the concealed gold, that he chose to walk through the Green Channel inspite of being in possession of gold which was far above the free allowance, that he had admitted that he was being paid to carry the gold in cash. In his initial statement recorded immediately after the seizure also mentioned that two persons Shri Irfan and Shri Bablu staying at Nagpada and Dargri were also travelling to Delhi for the

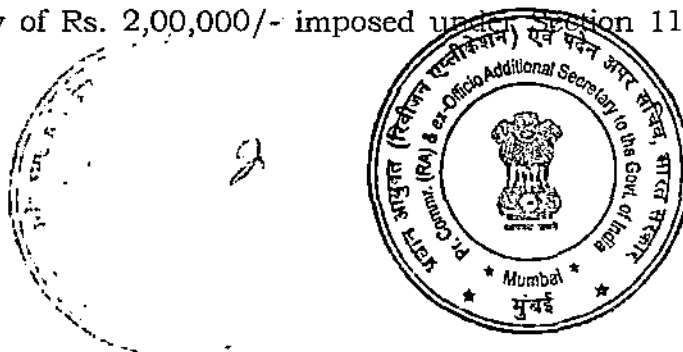


same purpose. All these factors point to a bigger racket of smuggling gold and the role of the respondent acting as a carrier.

13. If the respondent had not been intercepted by the officers of customs, he would have evaded customs duty on the gold ingeniously concealed in the trolley bag. Government is of the view that such acts of abusing the liberalized facilitation processes for genuine passengers should be dealt with firmly. The deterrents available in the law are required to be strictly enforced in such cases. Since the gold foil was ingeniously concealed in the trolley bag, the Commissioner(Appeals) has erred in allowing redemption of such a huge quantity of gold. The gold foil was required to be confiscated absolutely.

14. Government observes that the goods were liable to confiscation because of the acts of omission and commission by the respondent. The requirement of filing a true and correct declaration under the Customs Act, 1962 is an absolute and strict obligation on the passenger. If such declaration is found to be incorrect, as a natural corollary the penal provisions would come into play. In the present case, the respondent had imported a huge quantity of gold and also concealed it ingeniously in an attempt to evade customs duty thereon by trying to clear these goods through the Green Channel facility. Government is of the view that such delinquency is required to be put down in a firm manner. Therefore, the goods are liable to absolute confiscation.

15. However, the penalty imposed under Section 114AA is not sustainable. Penalty under Section 112 is imposable on a person who has acquired possession of and dealt with goods liable for confiscation. But there could be a situation where there are no goods which ever cross the border. Since such situations were not covered for penalty under Section 112/114 of the Customs Act, 1962, Section 114AA was incorporated in the Customs Act by the Taxation Laws(Amendment) Act, 2006. Hence, where penalty has once been imposed under Section 112(a), no separate penalty is required to be imposed under Section 114AA of the same Act. The Government therefore sets aside the penalty imposed under Section 114AA of the Customs Act, 1962. The penalty of Rs. 2,00,000/- imposed under Section 112(a) and (b) of the



Customs Act, 1962 in the Order-in-Original would suffice to meet the ends of justice.

16. In the light of the above facts, the Order-in-Appeal is set aside and the Order-in-Original passed by the adjudicating authority is restored after setting aside the penalty imposed under Section 114AA of the Customs Act, 1962.

17. The Revision Application is allowed in the above terms.

18. So, ordered.

*(Signature)*  
20.11.18

(ASHOK KUMAR MEHTA)  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. <sup>1001</sup>/2018-CUS (WZ) /ASRA/MUMBAI

DATED 30.11.2018

To,  
Shri Ajaz Abdul Kadar Jumani  
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Mumbai 400 003

Copy to:

1. Commissioner of Customs(Airport), Pune
2. Commissioner of Central Excise(Appeals-I), Pune
3. Sr. P.S. to AS (RA), Mumbai
4. Guard File
5. Spare Copy

