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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 371/440/WZ/B/2022-RA/296 Date of Issue : 01.01.2024

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ORDER NO. 108 /2024-CUS (WZ)/ASRA/MUMBAI DATED 31.01.2024  
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.

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Applicant : Shri Saifi Mohammed Parvez

Respondent : Pr. Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal Nos.  
AHD-CUSTM-000-APP-264-22-23 dated 07.06.2022  
issued on 07.06.2022 through F.No. S/49-327/CUS/  
AHD/2021-22 passed by the Commissioner of Customs  
(Appeals), Ahmedabad.

**ORDER**

This revision application has been filed by Shri Saifi Mohammed Parvez (hereinafter referred to as the Applicant) against the Order-In-Appeal Nos. AHD-CUSTOM-000-APP-264-22-23 dated 07.06.2022 issued on 07.06. 2022 through F.No. S/49-327/CUS/AHD/2021-22 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2. Brief facts of the case are that on on 23-03-2019, Shri Saifi Mohammed Parvez, the applicant, holding Indian Passport No. 59135764 had arrived at SVP International Airport, Ahmedabad from Dubai by Indigo flight No. 6E-072. On reaching the Arrival gate, the applicant moved out of the Indigo bus, took out two gold bars wrapped in black adhesive tape from each of the front pockets of his pants and handed it over to the loader (Mr. Shahid Anwar Gavali) standing near the side of the Arrival gate who greeted him. A Lady Constable of the Central Industrial Security Force (CISF) posted at the Departure Staff Gate Air Side of the SVP International Airport felt suspicious and intercepted the loader guy and asked him as to what was handed over to him. The said loader immediately took out the two gold bars wrapped in black adhesive tape and handed it over to the Lady Constable. She handed over the gold bars and the loader to the Duty Inspector, CISF. The CISF Inspector reached the Customs area of the Arrival Hall, he informed the AIU Custom officers about the entire incident and handed over the two metal objects wrapped in black adhesive tape alongwith the said loader to the AIU officers. Detailed search of the applicant and loader were made in the presence of two independent panchas. The Government Approved Valuer, Shri Nachiket Mavlankar tested the said two Metal Bars and confirmed that the same were made up of pure gold and certified that the two gold bars were weighing totally 2000.000 grams and valued at Rs. 58,38,000/- Tariff value and Rs. 66,54,000/- Local Market Value, which had been calculated as per the

Notification No. 23/2019-Customs (N.T.) dated 15.03.2019 and Notification No. 24/2019-Customs (N.T.) dated 20.03.2019. The Loader, Mr Shahid Anwar Gavali, in his statement submitted that the photograph of the applicant was shown to him by Mr. Imran Gavali, his Supervisor of M/s. Aroon Aviation Pvt. Ltd; that alongwith Mr. Imran Gavali, another common friend Mr. Mohammad Aamin Sandhi was also involved in the smuggling of gold from various passenger coming from Dubai to India, through SVPI Airport, Ahmedabad; that in the first week of February, Mr. Aamin and Mr. Imran had informed him that they had an offer of smuggling Gold from the ramp area of the SVPI Airport to outside of the Airport premises at SVPI Airport, Ahmedabad, that they all had discussed that the Gold had to be taken from the applicant coming by Indigo Flight No. 6E-072 from Dubai to Ahmedabad in the night; that his duty at the ramp area was managed by Mr. Imran as he was a Supervisor of M/s. Aroon Aviation Pvt. Ltd.; that it was decided that the packets containing the Gold was to be received either by him or by Mr. Aamin, from the applicant in the Apron area, as soon as the applicant gets down from the bus near the arrival gate near the apron area; that he had done such act of smuggling the Gold out of airport premises 3-4 times during the last one and a half months' time; that after clearing the smuggled gold out of the airport premises, he used to wait in the parking area till morning, and after clearing the morning flight, Mr. Imran would come and receive the packet of Gold from him alongwith Mr. Aamin; that both of them would go to deliver the packets of Gold to the concerned person; that he was well aware that smuggling of gold in to India by any person without paying Customs duty was an offence and that he had committed the offence of actively involving in smuggling of Gold in to India from Dubai without paying Customs duty and without declaring it before the Customs Department. After due process of investigation, SCN was issued to the applicant, the loader Mr. Shahid Anwar Gavali, Mr. Imran Gavali & Mr. Aamin Sandhi on 21-09-2020.

3. The Original Adjudicating Authority (OAA) viz, Joint Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. 37/JC/SM/O&A/2020-21 dated 07-09-2020, ordered for the absolute confiscation of the two gold bars weighing totally 2000.000 grams and valued at Rs. 58,38,000/- Tariff value and Rs. 66,54,000/- Local Market Value under the provisions of Sections 111 (d),111 (i), 111(1) and 111(m) of the Customs Act, 1962; ordered for absolute confiscation of the packing material - black adhesive tape which was used for concealment of the gold bars under Section 118(a) and 119 of the Customs Act, 1962 and imposed penalty of Rs. 5,00,000/- each on the applicant and on Mr. Shahid Anwar Gavali (i.e. the loader), Rs. 2,00,000/- each on Mr. Imran Gavali and on Mr. Aamin Sandhi under the provisions of Section 112(a) & (b) of the Customs Act 1962.

4. Aggrieved by the said order, the applicant viz Shri Saifi Mohammed Parvez only filed the appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Ahmedabad, (against the absolute confiscation of the gold and the penalty imposed on him) who vide his Order-In-Appeal No. AHD-CUSTOM-000-APP-264-22-23 dated 07.06.2022 issued on 07.06. 2022 through F.No. S/49-327/CUS/AHD/2021-22, did not find any reason to interfere in the impugned OIO passed by the OAA.

5. Aggrieved with the above order, the Applicant has filed these revision application on the following grounds:

5.01 That the statements recorded under section 108 of the Customs Act, 1962 were taken under duress and therefore they are not true and for the reasons cannot be relied to be true for the purpose of invoking the violations as alleged in the impugned SCN; that the gold is neither prohibited nor restricted, hence the goods in question is not liable for confiscation under Customs Act, 1962 and also not liable for penal action under section 112(a) & (b), under sub-clause 112(1) of the Customs Act, 1962.



5.02 That the statement given earlier that gold was given by one person named Shehzad Haji is not true, he had brought the said gold from his personal savings and borrowed money from his friends; that the goods in question clearly belongs to the applicant.

5.03 That the orders of the Adjudicating Authority and the Appellate Authority is erroneous having been based on wrong assumptions and presumptions and incorrect appreciation of Law and needs to be set aside

5.04 That the Adjudicating Authority and the Appellate Authority have failed to appreciate the fact that the applicant is ready to pay customs duty. The applicant relied to the case of Naresh Lokumal Serai vs. Commissioner of Customs (Export), Raigad, reported as 2006 (203) E.L.T. 580 (Tri. - Mumbai)

5.05 That section 125 of the Act clearly lays down that where the goods are not prohibited goods, in the event of their confiscation, the goods have to be released on redemption fine and the Adjudicating Authority does not have any option; that the lower authorities failed to appreciate the facts correctly, arrived at erroneous conclusions and thus failed to exercise their discretion properly. The applicant relied to the case of Commissioner Of Customs (Air) vs P.Sinnasamy in CMA No.1638 of 2008, before the Hon High Court of Madras decided on 23 August, 2016.

5.06 That there is no illegality/irregularity in the applicants action of bringing gold, even if it is presumed without accepting, that there is a case for confiscation, then since there is no ingenious concealment, the goods are liable to released on redemption, both in the event of considering the same as non-prohibited goods as well as prohibited goods. The applicant referred to the following case laws:

1. A.Rajkumari vs CC (Chennai) 2015 (321) ELT 540 (Tri- Chennai), wherein redemption of absolutely confiscated gold was allowed against reasonable fine and this case was also affirmed by the Hon. Apex Court vide 2015 (321) ELT A207 (SC).

2. Yakub Ibrahim Yousuf 2011 (263) ELT-685 (Tri. Mum);

3. Shaik Jameel Pasha Vs Govt Of India 1997 (91) ELT 277 (AP)

4. V.P.Hamid vs Commissioner of Customs, 1994(73)ELT 425 (Tri)
5. T.Elavarasan vs Commissioner of Customs(Airport) Chennai 2011 (266) ELT 167 (Mad),
6. Union of India Vs Dhanak M. Ramji 2009 (248) ELT 123 (Bom) ; This judgement of the Hon High Court of Bombay was also upheld by the Hon. Supreme Court vide its judgement dated 08-03-2010, reported in 2010 (252) ELT A102 (SC).
7. Commissioner Of Customs. Lucknow V/S. Mohd. Nayab & Imtiyaz Idris. 2017(357) E.L.T. 213 (Tri.-All)

5.07 That since the goods in question were not prohibited and as there is no offence committed by the applicant, the question of imposition of penalties under Section 112 (a) and (b) of Customs Act 1962, does not arise; that the applicant cannot be penalized under section 112(b) as the department has no evidence proving that the applicant in any way has done any of the action enumerated above in the manner alleged contrary to the provisions of the Customs Act, 1962. It has been consistently held by the Hon'ble Courts, Tribunals and Revisionary Authority of Govt. of India that if the import of commodities is not completely banned, Gold is not prohibited then such commodities or articles could be released on redemption fine.

5.08 The applicant referred to the followings Orders:

1. Order No: 73/2020-CUS(WZ)/ASRA/MUMBAI DT. 28.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Shri Sajjan;
2. Order No: 58/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 IN C/A/ Commissioner, Customs, Ahmedabad v/s Shabbir Taherally Udaipurwala;
3. Order No: 61/2020-CUS(WZ)/ASRA/MUMBAI DT. 21.05.2020 in c/a Commissioner, Customs, Ahmedabad v/s Basheer Mohammed Mansuri;
4. Order No: 126/2020 CUS(WZ)/ASRA/MUMBAI DT. 07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Hemant Kumar;
5. Order No: 123-124/2020-CUS(WZ)/ASRA/MUMBAI DT.07.08.2020 in c/a Commissioner, Customs, Ahmedabad v/s Rajesh Bhimji Panchal;
6. 2019(369)E.L.T.1677(G.O.I) in c/a Ashok Kumar Verma;
7. Order No: 20/2021 CUS(WZ)/ASRA/MUMBAI DT. 11.02.2021 in c/a Commissioner, Customs, Ahmedabad v/s Divyesh Dhanvantray Gandhi;
8. Order No: 954/2018 CUS(WZ)/ASRA/MUMBAI DT. 22.11.2018 in c/a Commissioner, Customs, Ahmedabad v/s Nayankumar Bhatiya;

9. Order No: 29/2018 CUS(WZ)/ASRA/MUMBAI DT: Elang 2018 Codersson, Zustoms, Chennai v/s Smt. Navene Elangovan;
  10. Order No: 140/2021 CUS(WZ)/ASRA/MUMBAI DTA 25.08 2021 in / Mohammed Gulfam v/s Commissioner of Customs Ahmedabad;
  11. Order No: 14/2018-CUS dated 05.01.2018 of the Government of India in c/a Parvez Ahmed Zargar, Delhi. V/s Commissioner of Customs New Delhi;
  12. Order No: 245/2021 CUS(WZ)/ASRA/MUMBAI DT. 29.09.2021 in c/a Memon Anjum v/s Commissioner of Customs Ahmedabad;
  13. Order No: 214/2021 CUS(WZ)/ASRA/MUMBAI DT. 26.08.2021 in c/a Ramesh Kumar v/s Commissioner of Customs Ahmedabad;
  14. Order No: 10/2019 CUS(WZ)/ASRA/MUMBAI DT. 30.09.2021 in c/a Faithimth Raseea Mohammad v/s Commissioner of Customs CSI Airport Mumbai;
  15. Order N. 277 to 279/2022 CUS(WZ)/ASRA/MUMBAI DT 23.09.2022 in c/a (1) Sanjay Ananth Surve (2) Smt. Rakhi Rahul Manjrekar (3) Suresh kumar Jokhan Singh V/s. Pr. Commissioner of Customs, CSMI, Mumbai;
  16. Order-in-Original No. AHM-CUSTM-000-COM-015-016-21-22 Dated 29.11.201 (The Principal Commissioner Ahmedabad, Shri Lalit Prasad;
- Prayer:-

5.09 The application requested to allow the goods taken over by the Customs Authorities on 23.03.2019 from the applicant may be handed over to the Applicant on payment of duty, or allowed to be re-exported. The penalty imposed to be dropped /reduced to a reasonable level commensurate with the misdemeanor.

6. Personal hearings in the case was scheduled on 26.10.2023. Shri. Rishikesh Mehra, Advocate, appeared online for the hearing and reiterated earlier points. He further submitted that applicant is owner of gold and gold is not prohibited. He further submitted that applicant has no past history of any offence. He requested to allow redemption of gold on reasonable fine and penalty.

7. The Government has gone through the facts of the case. Government observes that in this case the Applicant has filed appeal against the Orders issued by the lower authorities in respect of the absolute confiscation of the impugned gold seized and the penalty imposed on him and hence Government limits its decision to the same. Government notes that the Applicant had carried the gold from Dubai concealed in black adhesive tape, and handed over the same to the loader on moving out of the bus near the Passenger Arrival gate which reveals the applicant's intent to smuggle the gold into India with the help of others. The modus opted was that the loader would take the gold handed over by the applicant from the ramp area of the airport to the outside of the airport premises and wait in the parking area and hand it over to his supervisor who would deliver the gold to the concerned person. The applicant & the loader had admitted that the 2000 grams of gold recovered from the loader by the Customs ATU officers was actually smuggled by the applicant from Dubai to India. The act was pre-meditated and well thought out. It is clear that the applicant had resorted to an ingenious method of smuggling the gold with the intent to evade duty. By this action, it is clear that applicant had no intention to pay the Customs duty. The Applicant had not declared the impugned gold as required under section 77 of the Customs Act, 1962. The confiscation of the gold is therefore justified and thus, the Applicant had rendered themselves liable for penal action.

8. 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”.

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 Applicants 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 besides the quantum of gold which is quite high and its purity, indicating that the same was for commercial use, the manner in which the gold was attempted to be brought into the country is vital. The applicant had brought the impugned gold weighing 2000 grams, handed over the same to the loader and tried to smuggle in connivance with others, which reveals the intention of the applicant. The purity and primary form of the gold indicated that the same was for commercial use. The aforesaid quantity, purity and ingenious method adopted to smuggle the gold, probates that the applicant had no intention of declaring the gold to the Customs at the airport and made a systematic attempt to evade duty and smuggle the gold into India. The circumstances of the case probates that he did not have any intention of declaring the gold to the Customs at the airport. If the officer would not have noticed the handing over of the gold by the applicant to the loader at the ramp area, the gold would have been smuggled out of the airport. These facts have been properly considered by the Appellate Authority and the lower adjudicating authority while absolutely confiscating the impugned gold.

12. The option to allow redemption of 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 modus operandi opted to smuggle large quantity gold by deceiving the Customs Authorities, is a fit case



for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of gold and not allowed redemption of the same. The redemption of the gold will encourage non-bonafide and unscrupulous elements to resort to concealment and bring gold. If the gold is not detected by the Customs 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. The order of the Appellate authority upholding the order of the adjudicating authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

13. The Government finds while imposing penalty on the applicant under Section 112(a) and (b) of the Custom Act, 1962, the lower authorities have considered the role played by him in the smuggling activity in connivance with the others and had appropriately imposed Rs.5,00,000/- for the gold totally valued at Rs.58,38,000/-. The penalty imposed is commensurate with the omissions and commissions committed and therefore, Government is not inclined to interfere in the same.

14. The Applicant has pleaded for setting aside the Order passed by the Appellate Authority which has upheld the order passed by the Original Adjudicating Authority. The Government, keeping in mind the facts of the case is in agreement with the observations of the Appellate authority and finds that absolute confiscation is proper, legal and judicious and also penalty imposed under Section 112 (a) and (b) of the Customs Act 1962 is appropriate. Government does not find it necessary to interfere in the OIA passed by the Appellate Authority.



15. Accordingly, the Revision Applications filed by the applicant is dismissed.

*(SHRAWAN KUMAR)*  
(SHRAWAN KUMAR)

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

ORDER NO. 708 /2024-CUS (WZ)/ASRA/MUMBAI DATED 31.01.2024

To,

1. Shri Saifi Mohammed Parvez, H.No. 25/19, Nayabans, Hanuman Chowk, Muzaffanagar-251002.
2. Shri Saifi Mohammed Parvez, C/o Rishikesh J. Mehar, B/1103, Dev Vihaan, Behind 3<sup>rd</sup> Eye Residency, Motera Stadium Road, Motera Sabarmati, Ahmedabad-380005
3. The Principal Commissioner of Customs, 1<sup>st</sup> Floor, Customs House, Near All India Radio, Income tax Circle, Navrangpura, Ahmedabad-380009.
4. The Commissioner of Customs (Appeals), Ahmedabad, 4<sup>th</sup> Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009

Copy to:

5. Shri. Rishikesh J. Mehra, B/1103, Dev Vihaan, Behind 3<sup>rd</sup> Eye Residency, Motera Stadium Road, Motera Sabarmati, Ahmedabad-380005
6. Sr. P.S. to AS (RA), Mumbai.
7. File Copy.
8. Notice Board.