

F.No. 371/215/B/2022-RA  
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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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1844

Date of issue: 01.02.2024.

ORDER NO. 111-115 /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.

- Applicant : 1. Mrs. Alkaben Ashvinkumar Gondalia.  
2. Mrs. Asmitaben Nimesh Thesia.  
3. Mr. Jigneshbhai Surendra Kuamr Shah.  
4. Mr. Ashvinkumar Jayantilal Gondalia.  
5. Mrs. Hemaben Jigneshbhai Shah.

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

Subject : Revision Application filed under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-1224 to1228/2018-19 dated 18.03.2019  
[Date of issue: 29.03.2019] [F. No. S/49-393/2017] passed  
by the Commissioner of Customs (Appeals), Mumbai Zone-  
III.

**ORDER**

The below Applicants :

1. Mrs. Alkaben Ashvinkumar Gondalia.
2. Mrs. Asmitaben Nimesh Thesia
3. Mr. Jigneshbhai Surendra Kuamr Shah.
4. Mr. Ashvinkumar Jayantilal Gondalia.
5. Mrs. Hemaben Jigneshbhai Shah.

(herein referred to as the 'Applicants') have filed separate Revision application against the common Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1224 to 1228/2018-19 dated 18.03.2019 [Date of issue: 29.03.2019] [F. No. S/49-393/2017] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that on 09.07.2015 the offices of customs Air Intelligence Unit (AIU) intercepted above applicants alongwith Mrs. Padmaben Surendrakumar Shah mother of Applicant No.3 , who were travelling together and had earlier arrived at CSI Airport, Mumbai from Dubai by flight No. 6E-064 dated 09.07.2015. During personal search of the passengers each of them were found in possession of 02 gold chains of 300gms each concealed in either vest, near waist or in the undergarments. Thus, they were found in possession of 12 gold chains of 300 gms each collectively weighing 3600 gms and valued at Rs. 88,35,660/-. Further statement have been recorded under Section 108 of Customs Act,1962 on 19.07.2015 , wherein they admitted the carriage, non-declaration of gold. The case was adjudicated after completion of investigation and issuance of SCN. Pursuant to being assayed 12 gold chains of 300 gms each collectively weighing 3600 gms and valued at Rs. 88,35,660/- was seized in the reasonable belief that the same were being smuggled into India and hence was liable to confiscation under the provisions of the Customs Act, 1962.

3. After following the due process of law, the Original Adjudicating Authority (OAA) i.e. Additional Commissioner of Customs, CSMI Airport, vide Order-In-Original (OIO) No. ADC/RR/ADJN/567/2016-17 dated 27.03.2017 issued through F.No. S/14-5-365/2015-16/ Adjn [SD/INT/AIU/286/2015 AP 'C'] ordered for the absolute confiscation of the 12 gold chains of 300 gms each collectively weighing 3600 gms and valued at Rs. 88,35,660/- under Section 111 (d), (1) and (m) of Customs Act, 1962 respectively and penalty of Rs. 3,00,000/- each was imposed on the applicant no. 3 & 4 and penalty of Rs. 75,000/- each was imposed on the applicant no. 1,2 & 5 under section 112 (a) and 112 (b) of the Customs Act, 1962. During the investigation, Mrs. Padmaben Surendrakumar Shah mother of Applicant No.3 was expired.

4. Aggrieved, with this Order, the Applicants filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai Zone-III who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1224 to 1228/2018-19 dated 18.03.2019 [Date of issue: 29.03.2019] [F. No. S/49-393/2017] upheld the order passed by the OAA.

5. Aggrieved with the above order of the Appellate Authority, the Applicants have filed separate revision applications on the following grounds:

5.01. That the impugned order is bad in law and unjust;

5.02. That the impugned order has been passed without giving due consideration to the documents on record and facts of the case and is ex-facie, illegal and de-hors the provisions of law as contemplated in the Customs Act,1962;

5.03. That the OAA ought to have appreciated that dutiable goods brought by the Applicants is neither restricted nor prohibited;

5.04. That the foundation of seizure being without jurisdiction , is not sustainable in law.

5.05. That the respondent had come to the conclusion that the acts and/or omissions on the part of the Applicant was to evade customs duty and the evasion of customs duty can be done only in respect of dutiable goods and not prohibited goods;

5.06. That once the department 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;

5.07. That a bare perusal of the sub-section (1) of Section 125 of the Customs Act, 1962 makes it crystal clear that the respondent is required to give the notice an option to pay fine in lieu of confiscation in respect of the impugned goods which even as per the respondent are dutiable goods;

5.08. That absolute confiscation of the impugned dutiable goods would mean interpreting or giving a new meaning to the said sub-section (1) of Section 125 of the Customs Act, 1962;

The Applicants have relied upon the following case laws;

- (i) Rama overseas vs Union of India -2013 (293)E.L.T.669(P&H)

Under the circumstances, the Applicant prayed that set aside the impugned order and release the gold and Indian Currency without any penalty or fine.

6. Personal hearing in the case was scheduled for 06.12.2022,20.12.2022,10.10.2023,17.10.2023, 01.11.2023 and 29.11.2023. However, no one appeared for the personal hearing on the appointed dates.

Therefore, Government proceeds to decide these cases on merits on the basis of available records.

7. The Government has gone through the facts of the case and observes that the Applicants had brought assayed 12 gold chains of 300 gms each collectively weighing 3600 gms and valued at Rs. 88,35,660/-. From the statements dated 09.07.2015, it is clear that Applicants had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The Applicants had not disclosed that they were carrying dutiable goods. It also reveals that the act committed by the Applicants was conscious and pre-meditated. The Applicants were given an option to declare and pay Customs duty during his arrival. However the Applicants have neither declare nor paid the custom duty. Had they not been intercepted by the Customs officer, the Applicants would have gotten away with the gold. The confiscation of the gold was therefore justified and thus, the Applicants 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 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.”*

11.1 Government observes that besides the quantum of gold, which indicates that the same was for commercial use, manner of concealment is also vited. Government notes that the Applicants had travelled abroad together on four previous occasions in a short span of 45 days, which establish that they were regularly acting together and had acted collectively in the current instance as well.

11.2. The aforesaid circumstances of the case and ingenious concealment, probates that the applicants had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Original Adjudicating Authority while ordering the absolute confiscation of the gold and has been rightly upheld by the Appellate Authority.

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 manner of concealment being clever, conscious and ingenious, quantum of gold being for commercial use, this being a clear attempt to brazenly smuggle the impugned gold by the Applicants, is a fit case for absolute confiscation as a deterrent to such

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offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of the impugned gold. The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring 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. Government is in agreement with the order of the OAA absolutely confiscating the impugned gold. The absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity.

13. For the aforesaid reasons, the Government is inclined not to interfere with the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1224 to 1228/2018-19 dated 18.03.2019 [Date of issue: 29.03.2019] [F. No. S/49-393/2017] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and upholds the same.

15. The Revision Application is dismissed as being devoid of merit.

( SHRAWAN KUMAR )

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

ORDER NO. 111-115- /2024-CUS (WZ)/ASRA/MUMBAI DATED 31.01.2024.



To,

1. Mrs. Alkaben Ashvinkumar Gondalia, 16, Amar Apartment, Adarsh Nagar, Kabilpore, Navsari, Gujrat 396 424
2. Mrs. Asmitaben Nimesh Thesia, 303, Raja Laxmi Apartment A, Near Khandtareshwar Mahadev temple, Kataragum, surat 395 004.
3. Mr. Jigneshbhai Surendra Kuamr Shah, 305, Shaillekha apartment, Near Tin Batti, Kaji Nu Medan, Gopipura, Surat 395001.
4. Mr. Ashvinkumar Jayantilal Gondalia, C/1002, Sagar Sankul, Ugat Cannal Road, Jahangirabad, Surat 395001.
5. Mrs. Hemaben Jigneshbhai Shah, 401 Matruashish Apt., Near Tin Batti, Kaji Nu medan, Gopipura, Surat 395001
6. The Pr. Commissioner of Customs, Terminal-2, Level-II, Chhatrapati Shivaji International Airport, Mumbai 400 099.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S.M. Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.
2. Shri Raj Kaushik Vyas, Advocate, 401, Shivanjali Apartment, Rangeela Park, Ghod Dod Road, Surat, Gujarat--395001.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Noticeboard.

