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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F. No. 373/23/B/2021-RA, 371/15/B/2021,  
371/02/B/2021

Date of Issue 12.02.24

ORDER NO. 133 - 141 /2024 CUS(WZ)/ASRA/MUMBAI DATED 05 02.2024 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.

Applicants : (i) Mr. Mayur K. Kuchhaduiya (ii) Mr. Jay Sudhirbhai Vaidya,  
(iii) Mr. Manvendra Singh Vaghela,

Respondents: Pr. Commissioner of Customs, Ahmedabad

Subject : Revision Applications filed respectively, under Section 129DD of the Customs Act, 1962 against the Orders-in-Appeal No. AHD-CUSTM-000-APP-397 to 398/20-21 dated 29.10.2020 and AHD-CUSTM-000-APP-405-20-21 dated 09.11.2020 passed by Commissioner of Customs (Appeal), Ahmedabad.

ORDER

These 3 revision applications have been filed by (i) Mr Mayur K. Kuchhaduiya (herein referred to as the Applicant-1) (ii) Mr Jay Sudhirbhai Vaidya, (herein referred to as the Applicant-2) (iii) Mr Manvendra Singh Vaghela, (herein referred to as the Applicant-3) against the Orders-in-Appeal No. AHD-CUSTOM-000-APP-397 to 398/20-21 dated 29.10.2020 and AHD-CUSTOM-000-APP-405-20-21 dated 09.11.2020 passed by Commissioner of Customs (Appeal), Ahmedabad

2 All three Revision Applications mentioned above pertain to attempted gold smuggling with a nexus among the applicants. Since the issue involved is similar in all these cases, all are taken up together for a common disposal.

3 The brief facts of the case are that, an Intelligence was received by the DRI, Ahmedabad that Applicant-1 would be arriving at SVPI Airport, Ahmedabad by Air Arabia Flight G9-0481 from Sharjah on 24.07.2013 and would be carrying Gold Jewellery as well as Foreign Currency. Intelligence also further indicated that Applicant-1 would hand over the said goods to the Airline Staff at the time of disembarkation from the aircraft. Accordingly, upon arrival of the flight G9-0481 and after completion of disembarkation of the passengers, the officers of DRI identified Applicant-1 from his Indian passport number and found that he was a frequent flyer. He had traveled more than six times in 2013 between Ahmedabad and Mumbai to Sharjah and back. Applicant-1 admitted that he had brought three packets with him from Sharjah which were given to him by Shri Jagdishchandra Pandya and was instructed to hand over the same to a person of the airport staff. Applicant-1 informed that Shri Jagdishchandra Pandya had given him one mobile phone number and told him that the said phone was of a person of the airport staff and upon landing of the aircraft he should call him and the packets should be handed over to that person. Subsequent to what Shri Jagdishchandra Pandya stated to Applicant-1, he received a call from the said number on his mobile number and was instructed to remain seated till all the passengers had disembarked and he should use rear exit for disembarking from the aircraft. Enquiries from the office of Air Arabia

revealed that the said number was of Applicant-2, Airport Supervisor of Air Arabia, Ahmedabad. Enquiring with Applicant-2, it was revealed that he had not received any packets from Applicant-1 but had asked Shri Dhaval V Joshi and Shri Arpit Singh, ground handling staff, to be at the rear exit door of the aircraft and receive the packets from the last passenger to disembark from the aircraft. On inquiry, Shri Dhaval Joshi informed the officers that he along with Shri Arpit Singh had received three packets from one passenger who was the last to disembark from the aircraft. Shri Dhaval Joshi further informed that Applicant-2 had told them that there was some problem and they immediately take the three packets out of the airport. Accordingly, he and Shri Arpit Singh left the airport and kept the packets at the residence of the latter. Applicant-1 confirmed that those were the same packets which were brought by him from Sharjah and which were handed over by him to the two persons viz., Shri Dhaval Joshi and Shri Arpit Singh and whom he identified. The three packets were examined one by one in the presence of independent panchas and airport staff. One of the said packet was found to contain 100 currency notes of 100US \$ denomination. Another packet was found to contain assorted jewellery and the third packet too contained assorted jewellery. The Government approved valuer informed that the total value of the gold contained in the studded gold jewellery weighing approximately 3073.43 grams was Rs.70,68,272/-and including making charges total value of the 3073.43 grams of gold jewellery amounted to Rs 86,04,987/-. It was noticed that Shri Jagdishchandra Pandya had also used many other persons for carrying Gold Jewellery from Sharjah to India and which were smuggled into India in collusion with Applicants, S/Shri Firoz Shaikh Alam, Arpit Singh, Dhaval V.Joshi and Sameer Gulamnabi Mansuri. The investigation has revealed that in addition to the 3073.43 gms of Gold jewellery seized on 24.07.2013, a further quantity of approximately 80.00 Kgs of assorted gold jewellery approximately valued at Rs.22,39,83,940/-were smuggled into India during the period from February, 2013 to July, 2013. Further it is noticed that Shri Jagdishchandra Pandya and Shri Manu Balubhai Khuntia@ Kishore are working together and they had orchestrated the conspiracy with the connivance of the Air Arabia airline staff at SVPI Airport, Ahmedabad for smuggling of gold jewellery Shri Jagdishchandra Pandya and Shri Manu

Balubhai Khuntia@ Kishore had engaged Shri Pola Bhikhabhai kadegiya and Shri Vajsi Jivabhai khuntia@ Kishore Khuntia in Ahmedabad to coordinate the receipt and delivery of the smuggled gold jewellery in India. Frequent visits of Shri Jagdishchandra Pandya at Ahmedabad during the year 2013 also corroborate the same. Further (i) Applicant-1 (ii) Shri Jaymal Visabhai Khuntia (iii) Shri Ranmalbhai Arbhambhai Khuntia (iv) Shri Ketankumar Shantilal Morani & (v) Shri Arjan Ranmal Moda were the persons who were bringing the parcels containing gold jewellery given to them by Shri Jagdish Pandya from Sharjah for smuggling the same into India. All the five passengers/carriers upon landing of the flight of the aircraft at Ahmedabad airport used to receive phone call from Applicant-2 and as per his instructions disembarked from the aircraft using the rear exit door of the aircraft. Further as per the instructions given to them they handed over the parcels of gold jewellery to Shri Dhaval Joshi and/or Shri Arpit Shah. These were the persons who had knowingly involved themselves in the smuggling of gold jewellery for monetary benefit. SCN dated 12.02.2018 was issued to confiscate 80 00Kgs (approx.) of gold jewellery totally valued at Rs.22,39,83,940/- (approx.) smuggled into India which was already cleared through SVPI Airport, Ahmedabad and not available for seizure and to impose penalty on Applicants and others.

3.1 Seizure portion in this case was adjudicated vide O.I.O no.88/ADC-MM/SVPIA/O&A/2015- dated 20/22 05.2015 wherein an absolute confiscation had been ordered for gold jewellery totally weighing 3073.43 grams valued at Rs.86,04,987/- and US\$ 10,000/- equivalent to Rs. 5,96,500/- imported by Applicant-1, placed under seizure vide panchnama dated 24.07.2013, under Section 111(i), 111(1) & 111(m) of the Customs Act, 1962. The penalties had also been imposed under Section 112(b) of the Customs Act, 1962 on Applicants and others. SCN dated 12.02.2018 for the present case, has been decided vide impugned order and the adjudicating authority vide impugned order, has ordered for confiscation of 80Kgs (approx.) of gold jewellery totally valued at Rs 22,39,83,940/- (approx.) smuggled into India and which was already cleared through SVPI Airport, Ahmedabad; imposed penalty of Rs. 10,00,000/- on Applicant-1 under section 112(a) of the Customs Act, 1962, impose penalty of



Rs 8,00,000/- on Applicant-2, Rs 8,00,000/- on Applicant-3 under Section 112(a) & (b) of the Customs Act, 1962.

4. Aggrieved by this order, the Applicants filed an appeal with the appellate authority viz, Commissioner of Customs (Appeal), Ahmedabad, who vide impugned Orders in Appeal rejected their appeal and upheld the OIO.

5. Aggrieved with the above orders, the Applicants have filed these revision applications, inter alia on the following grounds;

**Applicant-1**

- i. he had traveled abroad independently on previous trips and that his statement was forcibly recorded in English, not in Gujarati, his mother tongue. He denies any personal or business relations with Shri Jagdish and argues that the statement admitting ownership of gold jewelry was made under compulsion. He requests a lenient view, emphasizing his innocence.
- ii. He denies that the original statement was recorded under force, duress, and beating, claiming it to be false and inadmissible in law.
- iii. He contends that the Directorate of Revenue Intelligence (D.R.I.) officers created a fabricated story without any basis to build a case against him. He highlights the lack of opportunity for declaration on the day of interception and argues that no offense of mis-declaration occurred in his previous trip.
- iv. On July 24, 2013, before the applicant could retrieve his baggage, he was intercepted by D.R.I officers without an opportunity to declare. The applicant maintains that he did not commit any offense of mis-declaration in his previous trip on that date. In the previous trip on July 24, 2013, he had imported only 3073.43 grams of gold jewelry valued at Rs. 8604987/- and US \$10000. He was willing to pay duty and a nominal fine to clear the gold.
- v. He has requested that :
  - (i) The Gold Jewellery weighing only 3073.43 gms. be ordered to be released on duty, fine and nominal penalty alongwith the F.C. of US \$10000 which was imported by the applicant on 24/7/2013.
  - (ii) The P.P. of Rs. 10 Lacs be waived / reduced as he had not imported alleged Gold Jewellery of approx. 80 Kgs. on the previous occasions

**Applicant-2**

1. The packets brought by Applicant-1, proposed for confiscation, do not belong to the Applicant-2. He requests the adjudicating authority to

- decide the fate of seized goods as per law. Despite this, a penalty was imposed without sufficient evidence against him.
- ii. he has been employed with Air Arabia since 2008, working in various capacities. As an Airport Supervisor, the appellant's duties include handling outgoing and incoming passengers, liaising with immigration and customs, and supervising ground handling staff
  - iii. He emphasizes his honest work history, citing no allegations of negligence against him during his five years with Air Arabia.
  - iv. He acknowledges a visit to Dubai in January 2013 but denies any involvement in a conspiracy for gold smuggling during that trip.
  - v. He having access to sensitive areas of the airport due to his position, denies misusing this access for personal gain. He argues that the allegations are baseless and lack evidence
  - vi. he asserts that all points have been considered by the Commissioner Appeals and adjudicating authority in a previous show cause notice, and issuing another notice on the same facts is unwarranted
  - vii. He contends that statements recorded under duress have been retracted and should not hold evidentiary value. The lack of cross-examination for other accused statements is highlighted, emphasizing the need for valid evidence against him.
  - viii. He requested to set aside the impugned OIA pertaining to him.

**Applicant-3**

- i. He argues that the Show-cause Notice is a copy-paste of the previous one, without any new evidence considered. This violates the concept of double jeopardy, as proceedings from the first notice have concluded with a tribunal order.
- ii. He is an Airport Manager for M/s Air Arabia, contends that the case relies on statements from co-noticees with contradictions and an involuntary confessional statement from him, obtained under duress. Request for cross-examination of co-noticees was denied.
- iii. He asserts that the alleged conspiracy was planned by others, mainly Shri Jay Sudhirbhai Vaidya and Shri Firoz Shaikh Alam. There is no evidence of his involvement or receiving monetary consideration.
- iv. Applicant-1, who smuggled goods, has not implicated him. Applicant-1's statement indicates instructions from Shri Jay Vaidya, not his.
- v. He describes ill-treatment and coercion during interrogation, including a retracted statement. The investigating agency rejected the retraction, claiming it as an afterthought.
- vi. The smuggled goods were not seized from his possession, and he was not involved in handling them.
- vii. He challenges the credibility of Shri Jay Vaidya's statement, emphasizing the lack of witnesses or independent corroboration for the alleged discussion about sharing monetary consideration.
- viii. He argues that mens rea (criminal intent) is essential for imposing penalties under section 112(b) of the Customs Act, 1962. Since there is

no evidence establishing mens rea on the his part, no penalty should be imposed.

- ix. He contends that penalties should be commensurate with the gravity of the offense and argues against imposing penalties in the absence of positive evidence establishing mens rea.
- x. Applicant has placed reliance on various case laws
- xi. He has requested to set aside the impugned OIA pertaining to him.

6. Personal hearings in the case was scheduled on 03.08.2023,. Shri O.M. Rohira, Advocate appeared for applicant-1 and reiterated the earlier submissions. He submitted that applicant was an eligible passenger. He requested to set aside or to reduce the penalty

Mr. R. Subramanya, Advocate for Applicant-2 appeared online and submitted that applicant-2 has already been penalized in seizure case. There was no evidence for past cases. He further submitted that applicant should not have been penalized for past cases without any evidence. He requested to waive the penalty or substantially reduce the same.

Shri D.K. Trivedi, Advocate for Applicant-3 appeared online and submitted that applicant has been penalized based on the statement of a co-accused. He further submitted that penalty proceedings against the applicant in the seizure case has already concluded. He further stated that based on same evidences penalty cannot be imposed again. He requested to drop the penalty.

7. Government notes the significance of the following key points concerning the applicant-1's involvement in smuggling activities, as outlined in paragraph 5 of the impugned Order-in-Appeal (OIA) :

- i. his statements on July 24, 2013, and August 26, 2013, confirm his active involvement in smuggling gold wherein he admitted to repeating the crime multiple times before getting caught on 24.07.2013 with 3073 43 grams gold.
- ii Admitted knowing Mr. Jagdishchandra Pandya for three to four months and to bringing jewellery packets to India five times, provided by Shri Jagdishchandra Pandya in Sharjah

- iii. the mobile and SIM card used during gold transportation were provided by Jagdishchandra Pandya and were to be returned upon reaching Sharjah.
- iv. Immigration stamps confirm his five previous trips
- v. Ticket bookings traced to Shri Hiren Modha on instructions from Shri Kishore Khunti, who was in Sharjah and had a company in Dubai.

From the above, it is noticed that Applicant-1 has not only participated in the smuggling incident dated 24.07.2013 but also engaged in similar activities during previous trips. This conclusion is reinforced by immigration stamps on the passport, the use of a mobile device and SIM card provided by Mr. Jagdish, and the traceability of ticket bookings.

8. Applicant-2 contends that the confiscated goods brought by Applicant-1 do not belong to him, and he disclaims any ownership in them. He further claims that his statement, recorded under duress, has been retracted, and therefore, it should not hold evidentiary value for imposing penalties under Section 112(a) or (b) of the Customs Act, 1962. Regarding retraction of the statements, Government finds that Adjudicating Authority has discussed it in detail in para 21.1 to para 21.4 of the OIO. Government agrees with these findings. Furthermore, Government highlights several key points indicating his involvement in smuggling activities:

- i. He admitted to being part of a conspiracy involving the smuggling of gold jewellery and to helping in the safe passage of gold jewellery out of the airport multiple times, estimating that about 80 parcels were cleared from February 2013 to July 24, 2013.
- ii. He mentioned that approximately two or three persons were sent every week, each carrying about four parcels. The parcels contained only gold jewelry, each weighing approximately one kilogram. The total weight of the gold jewelry amounts to about 80 kilograms.
- iii. He, as an Airport Supervisor for Air Arabia Airlines, had access to sensitive areas of the airport, including the tarmac and aircraft. This access was grossly misused in facilitating the smuggling of gold jewellery.



- iv The Adjudicating Authority considered the call records of the mobile number (9824331093) belonging to him. These records revealed communication with Shri Jagdish Pandya, the identified kingpin, both before and after carriers visited India. He also communicated with Shri Jagdish Pandya on his Dubai numbers and during various times when he was in India.
- v The monetary consideration for each transaction between him and Shri Jagdishchandra is a fact and its disbursement in various justified proportions has been admitted by the partners in smuggling also.
- vi In grounds of Appeal, Applicant-3 has admitted that the conspiracy was planned by others, mainly Applicant-2 and Shri Firoz Shaikh Alam.

In light of the above, it is evident that Applicant-2 actively participated in the smuggling operation from February 2013 to July 24, 2013.

9 Applicant-3 argued that the current Show Cause Notice is a copy-paste of a previous one (20/01/2014), and the principle of double jeopardy should apply, as the earlier case has concluded with a reduced penalty. He argued that issuing a subsequent Show-Cause Notice (12/02/2018) for the same cause as the previous one (20/01/2014) is a violation of the principle of double jeopardy. They assert that the penalty in the earlier case has already been finalized by the Hon'ble Tribunal. He contended that there is no substantial evidence against them, except for the statements of co-accused. Government notes that the earlier Show-Cause Notice (20/01/2014) was related to the seizure of 3073.43 grams of gold jewellery valued at Rs 86,04,987/-. In contrast, the current Show-Cause Notice (12/02/2018) is for the smuggling of a much larger quantity (80.0 Kgs) of gold jewellery, valued at Rs 22,39,83,940/- for the period from February 2013 to July 2013. Government notes the following key points indicating involvement of Applicant-3 in the smuggling activity:

- i Applicant-2 admitted in his statement that he received approximately Rs. 8.00 lacs from Shri Jagdishchandra Pandya for his involvement. Half of this amount (Rs. 4.00 lacs) was given to Applicant-3, and the remaining Rs. 4.00

lacs was distributed among himself and other individuals involved in the smuggling operation.

- ii. Applicant-2 admitted in his statement that the highest monetary consideration was given to applicant-3 for his role. He was taken into confidence, and his active participation in the smuggling activities was noted.
- iii. Instead of preventing Applicant-2 or cooperating with relevant agencies, he actively participated in the smuggling activities and remained an active participant. This gave confidence to subordinates and participants until the intervention of DRI officers.
- iv. his constant activity in vital airport areas compelled the syndicate members to involve him. It is noted that he was taken into confidence by Applicant-2, and the series of smuggling operations continued with his participation.

Government notes that the frequent smuggling of such a significant quantity of gold would not have been possible without the assistance of Applicant-3. Therefore, it is clear that he is an active participant of the smuggling operation and has received approx. Rs 4 lakhs from February 2013 to July 2013 for his involvement in the operation.

10. Applicants have argued against further penalties for the same offense, the government observes that the earlier penalties were specific to live consignments (pertaining to SCN dated 20/01/2014), whereas the present case pertains to goods smuggled in previous trips. The government notes that the penalties in earlier order, which have attained finality, were for live consignments, and the present case focuses on gold smuggled during the periods of February 2013 to July 2013, as established through their statements and supporting evidence.

11. From the aforementioned discussion, it is firmly established that all the applicants were members of the syndicate and actively engaged in the smuggling of gold. The conspiracy was commenced as early as February 2013, persisted until their apprehension in July 2013, a fact substantiated by the statements of the applicants. These statements were additionally corroborated through the examination of call records and the utilization of mobile phones provided by the

kingpin, Shri Jagdish Pandya. Furthermore, their travel details were verified by cross-referencing with their passport entries.

12. For the aforesaid reasons, Government is inclined not to interfere with the orders passed by the appellate authority and is inclined to dismiss the revision applications filed by the applicants

13. Revision Applications are thus, dismissed

( SHRAWAN KUMAR )

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

ORDER No. 139-/2024-CUS(WZ) /ASRA/

DATED 05.02.2024

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To,

1. Mayur K Kuchahadiya, Zundala, Opp. Jagdish Oil Mill, Near Joshi School, Porbandar.
2. Jay Sudhirbhai Vaidya, 4, Keshav Krishna Apartment, Inklab Society, Gulbai Tekra, Ambawadi, Ahmedabad-380015.
3. Shri Manvendra Singh Vaghela, A-504, Divyajeevan Residency, New C.G. Road, Chandkheda, Ahmedabad.
4. The Pr. Commissioner of Customs(Ahmedabad), 1st Floor, Custom House, Near All India radio, Income Tax Circle, Navarangpura, Ahmedabad-380009

Copy to:

1. The Commissioner of Customs (Appeals), Ahmedabad, 7th Floor, Mrudul Tower, B/H Times of India, Ashram Road, Ahmedabad- 380009.
2. Devashish K. Trivedi, Advocate, D / 307 Ganesh Meridian, Opp. Gujarat High Court, S.G Highway, Ahmedabad-380060.
3. O.M Rohira, Advocate, 148/301, Uphaar Mandir, 10<sup>th</sup> Road, khar(W), Mumbai-400052.
4. M/s Subramanya Law Company, 509, Venus Amadeus, Jodhpur Char Rasta, Satellite Road, Ahmedabad-380015
5. Sr. P.S. to AS (RA), Mumbai.
6. File Copy
7. Notice Board.

