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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 371/239/B/WZ/2021-RA | 961  
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Date of Issue : 12.02.2024

ORDER NO. 144-145/2024-CUS (WZ)/ASRA/MUMBAI DATED 02.02.2024  
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.

Applicant No.1 : Shri Abdul Bois Abdul Kareem.

Applicant No.2 : Shri Ajmireyasa.

Respondents : Pr. Commissioner of Customs, CSMIA, Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal No  
MUM-CUSTM-PAX-APP-145-146/2021-22 dated 27-05-  
2021 issued on 04-06-2021 through F.No. S/49-321 &  
322/2020 passed by the Commissioner of Customs  
(Appeals), Mumbai -III

**ORDER**

These Revision Applications have been filed by the Shri Abdul Bois Abdul Kareem (hereinafter referred to as Applicant 1) and Shri Ajmireyasa (hereinafter referred to as Applicant 2) against the Orders-in-Appeal No. MUM-CUSTOM-PAX-APP-145-146/2021-22 dated 27-05-2021 issued on 04-06-2021 through F No. S/49-321 & 322/2020 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2 Brief facts of the case are that the officers of AIU, CSMIA, Mumbai, on 31-07-2018 intercepted Applicant 1 who was holding Indian Passport, as he stepped out of the Prayer room of the Airport, as he was found exchanging his sandals with the Applicant No. 2. On being asked about the contents of their respective belongings and the reason for exchanging their footwear, Applicant 1 reluctantly admitted that gold dust was concealed in his sandals. On examination plastic pouch wrapped with brown coloured adhesive tape concealed in the cavity of the sandals were recovered. The pouches were cut opened and brown coloured sticky substance purported to be gold dust mixed with unknown material was found. The Government Approved Valuer examined and issued a provisional assessment certificate, certifying that the recovered material is gold dust of 999% purity pasted in wax and that approx. 618 grams of gold can be extracted and the value of the same would be Rs.16,94,704/-. The same were seized by the Officers in the reasonable belief that the same were smuggled into India in a clandestine manner and in contravention of the provisions of the Customs Act, 1962. Subsequently, the Out Turn Certificate issued by the India Government Mint certified the final weight of the gold as 688 794 grams of 995 fineness and totally valued to Rs 18,88,839/- After due process of investigation Show cause Notice was issued to the Applicants on 14.01.2019

3. After due process of the law, the Original Adjudicating Authority (OAA), viz Additional Commissioner of Customs, CSMI Airport, Mumbai, vide Order-In-Original No. ADC/SKR/ADJN/18/2019-20 dated 21-01-2020 ordered for the absolute confiscation of 688.794 grams of gold of 995 fineness and totally valued to Rs 18,88,839/- under Section 111(d), 111(l) and 111 (m) of the Customs Act, 1962 and a personal penalty of Rs. 3,77,000/- was imposed on Applicant 1 and Rs. 95,000/- was imposed on Applicant 2 under Section 112 (a)(l) of the Customs Act, 1962.

4. Aggrieved by the said order, the Applicants filed an appeal before the appellate authority viz, Commissioner of Customs (Appeals), Mumbai -III who vide Orders-In-Appeal No. MUM-CUSTOM-PAX-APP-632&633/2018-19 dated 11.10.2018 issued on 22.10.2018 through F.No. S/49-364 & 365/2016-17 upheld the OAA's Order and dismissed the appeal filed by the applicants.

5. Aggrieved with the above order, the Applicant has filed this revision application on the same grounds as it was filed before the Commissioner Appeals which is reproduced pointwise below,

5.01. that the Order of the respondent is against law, weight of evidence and circumstances and probabilities of the case. The gold is not prohibited item and according to the liberalized policy the gold can be released on payment of redemption fine and baggage duty.

5.02. that bare perusals of section 125 (1) of the Customs act 1962 makes it crystal clear that the respondent is required to give the notices an option to pay fine in lieu of confiscation in respect of the impugned goods.

5.03 that the applicant had not passed through the green channel. He was all along red channel at the arrival hall of Airport.

5.04 that there is no distinction between owner and carried under the Customs Act 1962. Section 125 of the Customs Act stipulates that when even confiscation of any good is authorized by this act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or where such owner is not known, the person from whose possession or custody been such goods have seized. But the customs authority always claims that person carrying goods is not entitled to claim the gold under the said act. The officers of customs are made up their mind that the gold should not be released and the act of the department is totally against the provisions of the customs act and contrary to the section 125 of the said act.

5.05. that as per section 77 of the customs Act 1962, the owner of any baggage shall, for the purpose of clearing it, make declaration of its contents to the proper officer. Since the passenger is being the owner of the baggage, in that circumstances the passenger is only liable for make declaration under the said act not any other person. The applicant further submitted that the authority one way stated that the passenger has not declared the contents of the baggage as per section 77 of the said act, other it is stated that he is not the owner of the goods. If authority had taken the stand that the passenger had not declared, then he cannot take the stand that he is not the owner of the baggage or goods.

5.06 The applicant further submitted that it is an admitted fact the goods have been recovered from the applicant and hence he is entitled to get back the gold on payment of baggage rate of duty. Further if the authority promptly



read section 125 of the customs act 1962, the department cannot argue that the appellant is not the owner of the gold or carrier. The contention of the department the owner or carrier is unsustainable under law, when the law permits to release the gold on payment of redemption fine and baggage rate of duty from whose possession the gold have been recovered, the authority cannot interpret that the gold cannot be released on the ground that the appellant is not the owner of the gold is contrary to law and abuse of process of law and mockery of justice. Thus it is clearly established that the authority bound by law and should exercise his power, otherwise the order become illegal.

5.07 There is no provision for absolute confiscation of goods. The option should be given under section 125 of the Customs act. Further there are several judgments by Revisional authority and Cestat and hon'ble supreme court and High court said the authority should exercise the power under section 125 of the act because the same is mandatory. The applicant relied on several judgements.

5.08. The applicant further submitted that the confiscation of the gold weighing 688 794 grams and valued at Rs.18,88,839 imposed the personal penalty of Rs. 3,77,000/- on Applicant 1 (personal penalty 20%) and Rs.95,000/- on Applicant 2 is very high hence the same to be reduced substantially and reasonably.

Under the above circumstances of the case the applicant has prayed to set aside the impugned order and to permit him to re-export or release the gold and also reduces the personal penalty under section 112 (a) of the Customs act 1962 and thus renders justice.

6. Personal hearing was scheduled on 09-08-2023, 23-08-2023, 10-10-2023 & 17-10-2023. However, no one appeared before the Revisionary Authority for personal hearing on any of the appointed dates for hearing. Since

sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records

7 The Government has gone through the facts of the case. The Applicants were intercepted when the Applicant No. 1 (International passenger) was exchanging the sandals with the Applicant No. 2 (domestic passenger). The Applicants had no intention to declare the gold and pay Customs Duty. The considerable quantity of the gold dust was discovered only when the Applicants had been intercepted and were thoroughly checked. The Applicants had not declared the gold concealed ingeniously in the sandals as required under section 77 of the Customs Act, 1962. The confiscation of the gold is therefore, justified and the Applicants have 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 substantial quantity of gold brought by the Applicant No 1, the manner in which it was attempted to be brought into the country is vital. Government observes that the impugned gold dust mixed with wax was kept in plastic pouches wrapped with brown coloured adhesive tape, concealed in the cavity of each of the Applicant No 1's sandal, which he had exchanged with the Applicant No 2 in the prayer room. This revealed clear intention and 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. These facts have been properly considered by the Appellate Authority and the lower adjudicating authority while absolutely confiscating the gold dust.

12. The main issue in the case is the manner in which the impugned gold was being brought into the Country. 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 was clever and ingenious, clear attempt to smuggle gold by mixing it with wax and concealing the same in the cavity of the sandals. This method adopted to smuggle gold 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. The redemption of the gold will encourage non-bonafide and unscrupulous elements to resort to concealment and bring gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Such acts of misusing 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 AA upholding the OAA's order of 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. Considering the aforesaid facts, Government is inclined to uphold the orders of absolute confiscation passed by the both the lower authorities.

13. 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. The Applicants have also requested to set aside the penalties imposed on them. Government finds that the penalty of Rs. 3,77,000/- imposed on Applicant 1 in respect of the gold valued at Rs.18,88,839/- is harsh and not commensurate with the omissions and commissions committed and the same is required to be slightly reduced. However the penalty of Rs.95,000/- imposed on the applicant No. 2 is appropriate and commensurate with the omission and commission committed and does not find it necessary to interfere in the same.

14. Accordingly, the Revision Applications filed by the applicants is dismissed.

13. The Applicants have requested to set aside the penalties imposed on them Government finds that the penalty of Rs. 3,77,000/- imposed on Applicant 1 in respect of the gold valued at Rs.18,88,839/- is harsh and not commensurate with the omissions and commissions committed and the same is required to be slightly reduced. However the penalty of Rs.95,000/- imposed on the applicant No. 2 is appropriate and commensurate with the omission and commission committed and does not find it necessary to interfere in the same.

14. In view of the above, the Government modifies the OIA passed by the AA to the extent of the penalty imposed on the Applicant No 1 and sustains the remaining part of the impugned OIA.

15. The Penalty of Rs 3,77,000/- imposed on Applicant 1 under Section 112(a)(i) of the Customs Act, 1962 is reduced to Rs.2,00,000/- (Rupees Two Lakh only). The absolute confiscation of the gold recovered and the penalty imposed on the Applicant 2 is sustained

16. Accordingly, Revision Applications are decided on the above terms

  
(SHRAWAN KUMAR)

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

ORDER No. 144-145/2024-CUS (WZ) /ASRA/MUMBAI DATED 7.02.2024.

To,

1. Shri. Abdul Bois Abdul Kareem, New No. 36, Old No. 14. 1<sup>st</sup> Floor, Lal Mohammed St. Chepauk, Triplicane, Chennai-600005
2. Shri. Ajmurevasa, 6/67, Nambudhalai PO, Nambudhalai Ramanthapuram - 623403.
3. Pr. Commissioner of Customs, Terminal - 2, Level-2, Sahar, Andheri West, Mumbai - 400 059
4. The Commissioner of Customs (Appeals), Mumbai-III. 5th Floor, Avas Corporate Point, Makwana Lane, Behind S M. Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy To,

- 1 Smt. Kamalamalar Palanikumar, Advocate, No. 10, Sunkurama Street, Second floor, Chennai - 600 001
- 2 Sr. P.S. to AS (RA), Mumbai
3. File Copy.
- 4 Notice Board.