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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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<b>F.No. 371/394/B/2022-RA</b>   918	Date of Issue	12.02.2024
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ORDER NO. 148/2024-CUS (WZ) /ASRA/MUMBAI DATED 7.2.2024  
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 : Mr. Anup Kumar Kishanlal Rajput

Respondent : Pr. Commissioner of Customs, Airport-I, Mumbai

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-145/2022-23 dated 06.05.2022 passed by  
the Commissioner of Customs (Appeals), Mumbai-III.

**ORDER**

This revision application has been filed by Mr. Anup Kumar Kishanlal Rajput (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-145/2022-23 dated 06.05.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that on 31.03.2019, the Officers of Air Intelligence Unit, CSI Airport, Mumbai, intercepted the Applicant, who had arrived from Dubai by Emirates flight no. EK 500 dated 30.03.2019, after he had cleared himself through Customs Green Channel. Personal search of the Applicant resulted in the recovery of two polythene packets containing wet clay like material purported to be gold dust, kept in the right- side pocket of the trouser worn by the Applicant. The Govt. approved valuer certified it to be wet gold dust provisionally weighing 703 grams (net weight 422 grams) and provisionally valued at Rs.12,31,818/-. The Officers seized the recovered wet gold dust under the reasonable belief that the same was attempted to be smuggled into India and hence, liable to confiscation under the provisions of the Customs Act, 1962. As per the Out-turn Certificate No. OT/GAD/12 dated 0.04.2019, issued by India Govt. Mint, the gold extracted was mentioned as 598.463 grams and was valued at Rs. 17,46,914/-.

3. The case was adjudicated by the Adjudicating Authority and the seized gold paste / extracted gold thereof weighing 598.463 grams valued at Rs.17,46,914/- was confiscated absolutely under section 111(d), (1) and (m) of the Customs Act, 1962. Personal penalty of Rs.1,70,000/- was imposed on the Applicant under section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved by this Order, the Applicant preferred an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai-III, who vide impugned Order-in-Appeal upheld the absolute confiscation and reduced the penalty to 1,70,000/-.

5. Aggrieved with the above order, the Applicant has made an exhaustive submission of case laws and have submitted copies including their submissions

made before the lower authorities etc. They have filed revision application on the following main points:

5.1 Gold is not a prohibited item. Gold imported by the Applicant was not liable for absolute confiscation.

5.2 Circular No 495/5/92-Cus VI dated 10-5-93 cannot prevail over the statute. Circulars are issued only to clarify the statutory provision and it cannot alter or prevail over the statutory provision.

5.3 Applicant claims ownership of the goods under absolute confiscation and prays for redemption of the gold.

5.4 The Applicant cant be claimed as habitual offender.

5.5 The Applicant prays that the gold under absolute confiscation may be ordered to be released to him on payment of reasonable fine and further proceedings against him may be dropped.

6. Personal hearing in the case was scheduled on 31.10.2023. Shri. Prakash Shingarani, Advocate for the Applicant, appeared and submitted that applicant brought small quantity of gold for personal use. He further submitted that applicant has no past history of any offence. He requested to allow release of gold on reasonable redemption fine and penalty.

7. The Government has gone through the facts of the case, and observes that the applicant had failed to declare the gold while availing the green channel facility. The applicant clearly had failed to declare the goods to the Customs as required under Section 77 of the Customs Act, 1962. By not declaring the gold carried by him, the applicant clearly revealed his intention not to declare the gold and pay Customs duty on it. The Government finds that the confiscation of the impugned gold was therefore justified.

8.1 The relevant sections of the Customs Act are reproduced below:

Section 2(33)

*“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with”*

Section 125

*“Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised 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 such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

*Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :*

*Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.*

*(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.”*

8.2 It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only by the banks

authorized by the RBI or by others authorized by DGFT and to some extent by passengers. Therefore, gold which is a restricted item for import but which was imported without fulfilling the conditions for import becomes a prohibited goods in terms of Section 2(33) and hence it liable for confiscation under Section 111(d) of the Customs Act.

9. 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" in terms of Section 2(33) and hence it is liable for confiscation under Section 111(d) of the Customs Act, 1962.

10. 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

d) Also, in the case of Union of India vs Dhanak M Ramji [2010(252)E.L.T. A102(S.C)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passenger.

14. Government, observing the ratios of all the above judicial pronouncements, arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case.

15. Government observes that there is no allegation that the applicant is a habitual offender and was involved in similar offence earlier. Further, the impugned gold paste was carried by the applicant in the trousers he was wearing, suggesting that the nature of concealment/carrying is not indicative of smuggling. The Applicant claimed ownership of the impugned gold. There are no other claimants of the said gold. The facts of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations.

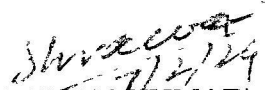
16.1 The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore, harsh and not reasonable. Government for the aforesaid reasons, is inclined to set aside the absolute confiscation held in the OIA and considers granting an option to the Applicant to redeem the Gold on payment of a suitable redemption fine, as the same would be more reasonable and judicious.

16.2 Government finds that the penalty of Rs. 1,70,000/- imposed on the Applicant for the gold valued at Rs. 17,46,914/- under Section 112 of the Customs Act, 1962 is appropriate and commensurate to the omissions and commissions of the Applicant.

17.1 In view of the above, the Government modifies the impugned order passed by the Appellate authority and allows the applicant to redeem the impugned gold viz. gold dust weighing 598.463 grams and valued at Rs. 17,46,914/- on payment of redemption fine of Rs. 3,50,000/- (Rupees Three Lakhs Fifty Thousand Only).

17.2 The penalty of Rs 1,70,000/- imposed under Section 112 of the Customs Act, 1962 being appropriate and commensurate with the omissions and commissions of the Applicant, Government does not feel it necessary to interfere with the imposition of the same and is sustained.

18. The Revision Application is disposed off on the above terms.

  
(SHRAWAN KUMAR)

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

ORDER NO. 148/2024-CUS (WZ)/ASRA/MUMBAI DATED 7.2.2024

To,

1. Mr. Anupkumar Kishanlal Rajput, R/o. C-503, Saptaratha Towers, Sunder Nagar, S.V. Road, Malad(W), Mumbai- 400063.
2. Pr. Commissioner of Customs, Airport-I, Chhatrapati Shivaji International Airport, Terminal – 2, Level – II, Andheri(E), Mumbai – 400099.

Copy to:

1. The Commissioner of Custom Appeals, Mumbai-III, Awas Corporate Point(5th Floor), Makwana Lane, Behind S. M. Centre Andheri-Kurla Road, Marol, Mumbai-400059.
2. Shri. P.K Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai – 400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Notice Board.

