

REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 371/359/B/2019-RA/692 : **Date of Issue: 02.02.2023**

ORDER NO. \60/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.01.2023 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 : Shri. Mohammed Suhail

Respondent : Pr. Commissioner of Customs, (Airport), Mumbai.

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal MUM-CUSTM-PAX-APP-364/19-20 dated 31.07.2019 [Date of issue: 13.08.2019 [F.No. S/49-463/2018] passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

ORDER

The revision application has been filed by Shri. Mohammed Suhail (herein after referred to as the "Applicant") against the Order in Appeal No. MUM-CUSTOM-PAX-APP-364/19-20 dated 31.07.2019 [Date of issue: 13.08.2019 [F.No. S/49-463/2018] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2.1. Briefly stated the facts of the case are that on 04.04.2017, the officers of Customs, CSI Airport, Mumbai intercepted one Senior Security Officer of Bangkok Airways, Shri Amit Bhostekar, near the ramp area in front of the Aerobridge No. V7. Personal search of Shri Amit Bhostekar resulted in the recovery of one rectangular shaped white coloured packet wrapped with transparent cellophane tape, from the front pocket of the full sleeve shirt worn by him. Affirming that the packet contained gold and on being asked, he replied that he had picked up the said packet from the seat pocket in front of Sear No 10F of the Bangkok Airways Flight No. PG 733 as per the direction of one passenger named Mohammed Suhail, who travelled on the same flight from Bangkok to Mumbai. On opening the packet, 02 bars of 01 kilo each and on cut piece of gold weighing 600 grams of 999% (24KT) purity and totally weighing 2600 grams and valued at Rs. 69,88,072/- were recovered and the same was seized under the reasonable belief that the same was attempted to be smuggled into India in contravention of the provisions of the Customs Act, 1962.

2.2. The Applicant who was the passenger who had arrived in Bangkok Airways Flight No. PG 733 was also intercepted near the Conveyor Belt No.5 and found to be in possession of one LED TV of 65' Samsung brand and one LED TV of 49' of Sony Brand and which were detained as the Applicant did have the money to pay the requisite Customs duty.

2.3. Shri Amit Vithal Bhostekar in his statement admitted that he knew the Applicant as he was a premium passenger and frequent flier by Bangkok Airways and the at the Applicant while departing to Bangkok on 01.04.2017 requested him to collect the packet containing gold bars from Flight No PG 733 arriving in Mumbai on 03.04.2017, for a monetary consideration of Rs. 40,000/- and that earlier on one more occasion he had done the task of collecting gold in a similar manner on the instructions of the Applicant.

2.4. The Applicant admitted knowledge, possession, ownership, non declaration and recovery of the said 03 pieces of gold recovered from Shri Amit Bhostekar and admitted that he had placed the gold in the seat pocket in front of Seat 10F and that Shri Amit Bhostekar had acted on his instructions and that he had illegally smuggled gold bars weighing 2.600 kilos on 03.04.2017 and had earlier smuggled gold bars weighing 1.800Kgs on 23.03.2017 in a similar manner.

3. Following investigations and following the due process of law, the Original Adjudicating Authority i.e. Addl. Commissioner of Customs, CSI Airport, Mumbai by Order-In-Original No. ADC/AK/ADJN/117/2018-19 dated 19.06.2018 [S/14-5-92/2017-18 Adjn – SD/INT/AIU/96/2017 AP 'C'] ordered the absolute confiscation of the impugned gold collectively weighing 2.6 kilograms, valued at Rs. 69,88,072/- under Section 111(d), (l) and (m) of the Customs Act, 1962 and imposed penalties on Shri Amit Vithal Bhostekar, Shri Habibullah Mohiddin Neelavar and the Applicant. Penalty of Rs. 9,00,000/- was imposed on the Applicant under section 112 (a) and (b) of the Customs Act, 1962 and penalty of Rs. 4,50,000/- was imposed on the Applicant under Section 112(a) and (b) of the Customs Act, 1962 for the earlier admitted earlier clearance of gold weighing 1.800 Kg valued at Rs.46,71,072/-,

4. Aggrieved by the said order, the Applicant filed an appeal before the Appellate Authority i.e Commissioner of Customs (Appeals), Mumbai Zone- III who vide Order in appeal No. MUM- CUSTM-PAX-APP-364/19-20 dated 31.07.2019 [Date of issue: 13.08.2019 [F.No. S/49-463/2018] rejected the Appeal.

5. Aggrieved with the above order, the Applicant has filed these revision applications interalia on the grounds that;

5.01. That the AA failed to take into consideration all the submissions made by the Applicant;

5.02. That the Applicant admits to purchase, carriage, intention to evade customs duty and abandonment of gold bars but denies the allegations that he attempted to clear the gold bars with the help of Amit Bhostekar;

5.03. That he got nervous and was in a dilemma as to whether to risk committing a crime and so decided to abandon the gold;

5.04. That Gold is not 'prohibited goods', but only 'restricted goods'. Import of gold is no longer prohibited and therefore, it is the duty on the part of the adjudicating authority, if he is of the view that it is liable for confiscation, to permit its redemption on appropriate fine;

5.05. That gold is not prohibited for import and therefore an option should be given to the importer for redemption of goods, even if the importer fails to fulfil the conditions for import of gold on payment of fine which does not exceed the market price of the goods less duty payable thereon;

5.06. If any goods are restricted to import, the Government fixes some sort of barriers to import, which an importer has to overcome such barriers which means, certain procedures have to be completed to import such restricted products. If any import of goods adversely affects the health of human, animal, plants and other species, such goods are prohibited to import by the government of importing country. The restriction to import any goods is decided by the government under foreign trade policy amended time to time and that by importing the gold, the Applicant has not contravened the provisions of Section 111(d) and Section 125 of the Customs Act, 1962 and cannot be considered as prohibition under FTP 2014-19;

5.07. The re-shipment of the impugned gold may be allowed as Section 125 of Customs Act, 1962 provides that in case of prohibited goods the adjudicating authority may give an option of redemption and in this way he has discretionary power but for other than prohibited goods the adjudicating authority has to give option to pay fine in lieu of confiscation and in this way the adjudicating authority shall allow redemption to the owner or to the person from whose possession such goods have been seized. The Applicant has relied on the following case laws in support of their contention:

- (i) Kusumbhai Dahyabhai Patel vs CC (P), Ahmedabad [1995 (79) ELT 292]
- (ii) Hemant Bhai R. Patel vs. CC, Ahmedabad [2003 (153) ELT 226 (Tri-LB)]
- (iii) K.A. Mohamed Kunhi vs. CC (Appeals) [1992 (62) E.L.T. 669 (G.O.I.)]
- (iv) Groves Overseas Pvt. Ltd. Vs CC 1990 (46) E.L.T. 129 (Tribunal),
- (v) A.K. Jewellers vs. CC, Mumbai [2003 (155) ELT 585 (Tri LB)]
- (vi) KK Gems vs. CC, Mumbai-1 [1998 (100) ELT 70 (Tri)]
- (i) Yakub I. Yusuf vs. CC, Mumbai [2001 (127) ELT 543 (Tri Mum)]
- (ii) Afzal Agency vs. CESTAT [2006 (205) ELT (Kar)
- (iii) Liaquat Ali Hameed, [2003 (156) E.L.T. 863 (Tri. Chennai), CESTAT]
- (iv) Revision order in the case of CC vs. Mrs. Patel N. [1992 (62) ELT 674 (GOI)]
- (v) Revision order no.392/2002 in case of Shri Nasir Asgar Mirab

- (vi) Revision order no.33/2008 in case of Shri Deepak Hiralal Parekh
- (vii) Revision order no.34/2008 in case of Shri Pradeep Kumar Bhanwarlal
- (viii) Revision order 0.38/2008 in case of Mrs. Majeeda Mohammed Yonus
- (ix) Revision order no,178/2008 in case of Mr. Ravinder Sandharam Dulari
- (x) Revision order no. 198/2010 in case of Shri Mukadam Rafique Ahmad
- (xi) Revision order no. 213/2013 in case of Mrs Sandhya Vinayak Kerkar
- (xii) Revision order no. 226/2013 in case of Shri Ansar Ahmad Sheikh
- (xiii) Rev. Order NO. 598-590/1994 in case of Mohd. Ramzan [1995 (75) KLT 207]

The gist of these judgements is that redemption of mis-declared goods can be allowed u/s 125 ibid for re-export.

- (i) Rajendran Thangam vs. CC, Chennai [2011 (270) ELT 37 (Mad)]
- (ii) Kannan Karuppusamy vs. CC, Chennai [2011 (269) ELT 72 (Mad)]
- (iii) Dhanak Madhusudan Ramji vs. Commissioner of Customs (Airport), Mumbai [2009 (237) E.L.T. 280 (Tri. - Mumbai)]
- (iv) A. Pajkumari vs. Commr of Cus. (Airport Air Cargo), Chennai [2015 (321) ELT 540]
- (v) Commissioner vs. A. Rajkumari [2015 (321) ELT. A207 (S.C.)]
- (vi) Mohd, Zia Ul Haque before Government of India [2014/314]849 GOI]
- (vii) Hargovind Das K. Joshi vs Collector of customs [1992 (61) ELT 172(SC)]-
- (viii) Universal Traders vs. Commissioner [2009 (240) E.L.T. A78 (S.C.)]

5.08. That the argument of the Applicant is related to consistency in favour of 'formal' justice, i.e., that two cases which are the same (in relevant respects) should be treated in the same way. It would simply be inconsistent to treat them differently. In the case of precedent this argument is said to favour following the earlier case: assuming that one cannot change the earlier decision (because it is too late to appeal, or the party to the case has reasonably relied upon it, etc), the only way to ensure consistency is for later decision-makers to treat the earlier decision as a precedent;

5.09. That if the original litigant was treated less favourably than they deserved then again that mistake should be corrected if it can be (e.g. by appeal, or, if

that is too late, by remedial legislation or by executive action such as pardon or ex gratia payments), but it is no reason for treating a later litigant unfavourably as well. In the case of Mr the Applicant which is similar to the cases relied by the AA, the decision taken against the Applicant was inconsistent and thus the Appellate Authority failed to follow consistency in adjudicating cases with similar and identical facts;

5.10. That Section 125 of Customs Act provides that option of redemption can be given in case the seized goods are not prohibited and gold as such is not a prohibited item and can be imported and such import is subject to certain conditions and restrictions including the necessity to declare the goods on arrival at the Customs Station and make payment of duty at the rate prescribed. The Applicant has relied upon the following case laws in support of their contention that confiscated gold can be redeemed on payment of redemption fine:

- (i) Shaikh Jamal Basha vs. Government of India – [1992 (91) ELT 227(AP)]
- (ii) Mohamed Ahmed Manu vs. Commr. of Customs, Chennai [2006 (205) ELT 383 (Tri-Chennai)]
- (iii) Mohd Zia Ul Haque vs. Addl Commr. of Customs, Hyderabad [2014 (214) ELT 849 (GOI)]

5.11. That in common law legal systems, 'precedent' is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts. And common-law legal systems place great value on deciding cases;

5.12. That in a common law system, judges are obliged to make their rulings as consistent as reasonably possible with previous decisions on the same subject. Under the doctrine of stare decisis, a lower court must honour findings of law made by a higher court. Simply put, it binds courts to follow legal precedents set by previous decisions;

5.13. That the Hon'ble Supreme Court in the case of Shanker Raju vs Union of India, has explained the legal concept of Stare Decisis. The doctrine pertains to the concept of being bound by one's earlier decision;

5.14. That under the common law system, judges are obliged to make their rulings consistent with previous judicial decisions and under the doctrine of 'stare decisis' a lower court must honour findings of law made by higher courts. While applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Applicant has relied upon the following case laws in support of their contention:

- (i) CCE, Calcutta vs. Alnoori Tobacco Products [2004(170) ELT 135 (SC)]
- (ii) Escorts Ltd vs. CCE, Delhi [2004 (173) ELT 113 (SC)].
- (iii) CC (Port), Chennai vs. Toyota Kirloskar [2007 (213) ELT 4 (SC)]
- (iv) E.I. Dupont India Private Limited vs. UOI – [2014 (5) TMI 128]
- (v) Clari's Life Sciences Limited vs. Union of India-[2014 (1) TMI 1467]
- (vi) Waman Rao vs. Union of India [(1981) 2 SCC 362]
- (vii) Manganese Ore (India) Ltd. vs. Regional Asstt, CST[(1976) 4 SCC 124]
- (viii) Ganga Sugar Corpn. vs. State of U.P. [(1980) 1 SCC 223]
- (ix) Union of India v. Raghubir Singh, [(1989) 2 SCC 754]
- (x) Krishna Kumar vs. Union of India, [(1990) 4 SCC 207]
- (xi) Union of India & Anr. vs. Paras Laminates (P) Ltd, [(1990) 4 SCC 453]
- (xii) Hari Singh vs. State of Haryana
- (xiii) SC judgement in Bombay Dyeing and Manufacturing Company Ltd. vs. Bombay Environmental Action Group
- (xiv) Islamic Academy of Education vs. State of Karnataka

5.15. That in the instant case the Commissioner (Appeals) should have examined the judgements/decisions relied upon by the appellant, facts of the cases, legal issues involved in the cases, arguments raised and cases cited by the parties, legal reasoning that is relevant to resolve those issues, judicial

opinions given by the Courts, ruling of the court on questions of law, the result of the case: the court's order, and which party was successful and the applicability of ratio of the said judgements in the case being dealt:

- (i) CIT vs. Sun Engineering Works (P) Ltd
- (ii) Madhav Rao Scindia vs. Union of India

5.16. That the order passed under Section 35EE is quasi-judicial in nature but whether the order is administrative or is quasi-judicial, the basic principle is that one cannot be said to be aggrieved by one's own order and in this view of the matter the Central Government cannot question its own order passed under that Section;

- i) CCE, Nagpur vs. Indorama Textiles [2006(204) W.L.T222(Bom)]
- ii) Sureshkumar Raisonni and others [2006(93) E.L.T 540 (Tri Mumbai)]
- iii) Dhanak Mahusudan Ramji vs CC Airport, Mumbai [2009 (237) E.L.T. 280 (Tri-Mum)]

5.17. That from various judgements of the Hon'ble Courts and other forums it transpires that in cases of gold brought by the passenger and not declared to avoid payment of duty, the option of redemption under section 125 of Customs Act, 1962 can be exercised to secure ends of justice. The Applicant has relied on the following case laws in support of their contention:

- (i) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mumbai)]
- (ii) In Neyveli Lignite Cor Ltd vs. UOI [2009 (242) E.L.T. 487 (Mad.)]
- (iii) Hargovind Das K. Joshi vs. Collector of customs [1992 (61) ELT 172(SC)]
- (iv) Universal Traders vs. Commissioner [2009 (240) E.L.T. A78 (SC)]
- (v) Gauri Enterprises vs. CC, Pune [2002 (145) ELT (705) (Tri Bangalore)]
- (vi) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (vii) Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]
- (viii) VP Hameed vs. Collector of Customs Mumbai 1994(73) ELT 425 (Tri)

- (ix) T. Elavarasan Vs Commissioner of Customs (Airport), Chennai [2011 (266) ELT 167 (Mad)]
- (x) Kadar Mydin vs. Commissioner of Customs (Preventive), West Bengal [2011 (136) ELT 758]
- (xi) Sapna Sanjeeva Kolhi v/s Commissioner of Customs, Airport, Mumbai
- (xii) Vatakkal Moosa vs. Collector of Customs, Cochin [1994 (72) ELT (G.O.I)]
- (xiii) Halithu Ibrahim vs. CC [2002-TIOL 195 CESTAT-MAD]
- (xiv) Krishnakumari vs. CC, Chennai [2008 (229) ELT 222 (Tri Chennai)]
- (xv) S.Rajagopal vs. CC, Trichy [2007 (219) ELT 435 (Tri-Chennai)]
- (xvi) M. Arumugam vs. CC, Trichirapalli [2007 (220) ELT 311 (Tri-Chennai)]
- (xvii) Union of India vs. Dhanak M. Ramji [2009 (248) E.L.T. 127 (Bom.)]
- (xviii) Peringatil Hamza vs CC (Airport), Mumbai [2014 (309) ELT 259 (Tri Mumbai)]
- (xix) R. Mohandas vs. CC, Cochin [2016 (336) ELT 399 (Ker)]
- (xx) A. Rajkumari vs CC, Chennai [2015 (321) E.L.T 540 (Tri Chennai)]
- (xxi) Shaikh Matani Bi vs Pr CC, Chennai [2017(345) E.L.T. 201 (Mad)]
- (xxii) Manishkumar Batukbhai Kathiriya vs PC Customs [2018(8) GST 101(Guj)]
- (xxiii) Rafeeq Ahmed Mustafa vs. AC Cus Chennai [2016(342) E.L.T. 539(Mad)]
- (xxiv) Thamboli Shaffiulla vs. PCC, (Airport) Chennai-I [2017(348) E.L.T. 422(Mad)]
- (xxv) N.Hyder Ali vs. PCC [2017(E.L.T. 633(Mad)]
- (xxvi) Shihabudeen Mannambath vs. PCC [2017(345) E.L.T 617(Mad)]
- (xxvii) Rajaram Bohra vs. UOI [2015(322) E.L.T 337(Cal)]

Under the circumstances, the Applicant prayed that the order of the Appellate Authority be set aside and the gold under absolute confiscation may be ordered to be released to the Applicant on payment of redemption fine and penalty.

6. Personal hearing in the case was scheduled for 22.09.2022. Shri Prakash Shingrani, Advocate appeared for the hearing on the scheduled date, on behalf of the Applicant. He submitted that the gold was not a prohibited item and that the Applicant had brought the gold from his own funds and Applicant was

not a habitual offender. He requested for release of the gold on reasonable fine and penalty.

7. The Government has gone through the facts of the case. The Applicant was a passenger on an international flight and had deboarded the flight but had left the impugned gold in the seat pocket in front of Seat 10F and that Shri Amit Bhostekar had acted on his instructions in the attempt to smuggle the gold when they were intercepted. The Applicant had used an innovative method to hoodwink the Customs and smuggle out the gold without Customs duty being discharged on the same. Applicant had meticulously pre-planned the method adopted to smuggle the gold and had adopted an ingenious method to avoid Customs and payment of duty and had used the services of an airline employee who had unhindered access to the aircraft and the precincts of the Customs area of the airport. Had it not been for the alertness exhibited by the Customs, the Applicant in cahoots with his accomplice would have been successful in smuggling out the gold and evading Customs duty. It is clear that the Applicant had resorted to this innovative and ingenious method to evade duty. By this action, it is clear that the 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. In this case, the quantity of gold seized is large and meant for commercial use and moreover, a very innovative and ingenious method of concealment to evade Customs duty had been adopted. The Applicant had pre-planned and selected the method that they would use to avoid detection and thereby to evade Customs duty. The absolute confiscation of the gold is therefore justified and thus, the Applicant had rendered himself 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 was 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 also observes that the manner in which the gold was concealed i.e. by using an innovative and ingenious method of leaving the gold in the seat pocket of the aircraft and then having an accomplice who is an airline employee to pick the gold from the seat pocket reveals the innate intention of the Applicant. It also reveals the criminal bent of mind wherein, this method was adopted by him in tandem with an accomplice who had authorised and unhindered access to the aircraft and precincts of the sanitized customs area, with a clear intention to evade duty and smuggle the gold into India. The circumstances of the case especially the ingenious method adopted, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Appellate Authority and the lower adjudicating authority while absolutely confiscating the impugned gold.

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 being clever, innovative and ingenious with a clear attempt to smuggle the gold, this is a fit case for absolute confiscation which would act as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of the offence, the adjudicating authority had rightly ordered the absolute confiscation of gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT 753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". 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 Custom 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 that the Applicant has cited and relied upon a plethora of case laws to buttress their case and the same have been perused and considered. The cases pertain to use / exercise of discretion and justification to redeem the gold. Government notes that the decision of redemption of goods is discretionary and dependent on the facts and circumstances of each case and the discretion to release the gold is based on various factors such as methodology of smuggling, manner of concealment,

quantity, attempt of smuggling as part of a syndicate etc. In this case, the Government finds that the lower authorities have rightly considered all these factors while denying redemption.

14. As regards the imposition of penalty in respect of the admitted earlier clearance of gold weighing 1.800 kgs by the Applicant, the entire chain of events has been unearthed by investigations and the act of smuggling that was preceded to the instant case, has been confirmed by way of confessional statements not only of the Applicant but all others involved in the act including the person who assisted the Applicant, the buyer and confirmation of the proceeds of sale and admission that the proceeds were used to procure the gold in the instant case and thus the imposition of penalty of Rs. 4,50,000/- for the past act of smuggling is justified as held by the Appellate Authority.

15. The Government finds that the penalty of Rs. 9,00,000/- imposed on the Applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed by the Applicant. The Government does not find it necessary to interfere in the order passed by the lower authorities.

16. The Applicant have 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 and judicious and also the penalty imposed under Section 112(a) & (b) of the Customs Act 1962 is proper and judicious and commensurate with the omission and commissions committed, does not find it necessary to interfere in the same.

17. In view of the above discussion, Government is inclined not to interfere with the Order-in-Appeal No. MUM-CUSTM-PAX-APP-364/19-20 dated 31.07.

2019 [Date of issue: 13.08.2019 [F.No. S/49-463/2018] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III and upholds the same.

18. The Revision Application is hereby dismissed.

Shrawan
31/1/23
(SHRAWAN KUMAR)

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

ORDER No. 160/2023-CUS (WZ) /ASRA/

DATED 31.01.2023

To,

1. Mr Mohamed Suhail, Hotel Al Tayba, Opp Akbarally, Pydhonie, Mumbai 400 003.
2. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai - 400 099.

Copy to:

1. Shri Prakash Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai 400 051.
2. 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.
3. Sr. P.S. to AS (RA), Mumbai.
4. File copy.
5. Notice Board.