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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. 371/398/B/2019-RA / 845  
371/396/B/2019-RA

Date of Issue 08.02.2023

ORDER NO. <sup>185-186</sup> /2023-CUS (WZ)/ASRA/MUMBAI DATED 03.02.2023  
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.

F.No. 371/398/B/2019-RA

Applicant No. 1 : Shri. Mohammed Ashraf Ansari.

F.No. 371/396/B/2019-RA

Applicant No. 2 : Shri. Mohammed Imran Ansari.

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

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-233-234/2019-20 dated 26.06.2019  
(DOI: 04.07.2019) [F.No. S/49-265/2018] passed by  
the Commissioner of Customs (Appeals), Mumbai-III.

**ORDER**

These two Revision applications have been filed by Shri. Mohammed Ashraf Ansari (herein after referred to as the Applicant-1) and Shri Mohammed Imran Ansari (herein after referred to as the Applicant-2) against the Order in appeal No. MUM-CUSTOM-PAX-APP-233-234/2019-20 dated 26.06.2019 (DOI: 04.07.2019) [F.No. S/49-265/2018] passed by the Commissioner of Customs (Appeals), Mumbai-III. The issue is related to smuggling of gold by Applicant No. 1 and assisted by Applicant No. 2 and therefore Government takes up both the appeals together for disposal.

2. Brief facts of the case are that, on 14.03.2017, Shri Mohammed Ashraf Ansari (Applicant No.1) holding Indian Passport No. N-5508922 arrived at CSI Airport, Mumbai from Dubai by Emirates Airlines Flight no. EK-500 dated 14.03.2017. Applicant No.1 was intercepted by the Customs Officers of Air Intelligence Unit (AIU), after he had cleared himself through Green Channel of Customs. During personal search and examination of luggage by the Customs Officers the Applicant No.1 was found in possession of 02 new I-Phone 6 (64GB) collectively valued at Rs. 60,000, one new laptop of "Dell Inspiron" brand valued at Rs. 43,000/- and one "GEEPAS" make multimedia speaker. During screening of the said multimedia speaker some suspicious image appeared and hence the same was opened by the Customs Officers which resulted into recovery of 27 rectangular gold pieces collectively weighing 1405 grams (24 kt purity). During recording of statement of the Applicant No.1, it was revealed that one Mr. Zuber Rauf at Sarjah had handed over the said multimedia speaker containing the impugned 27 gold pieces to him to carry the same to India for monetary consideration of Rs. 6,000/-. It was also revealed that one Mr. Mohammed

Imran Ansari (Applicant No.2) had made all the arrangements for his travel to abroad including his flight tickets from Mumbai to Dubai and back. The detailed search resulted into recovery of 27 gold pieces collectively weighing 1405 gms (24 kt purity) valued at Rs. 38,87,473/-, 02 new 1-Phone 6 (64GB) collectively valued at Rs. 60,000/-, and one new laptop of "Dell Inspiron" brand valued at Rs. 43,000/- and the same was seized by the Officers under the reasonable belief that the same were being smuggled into India and hence liable for confiscation under the provisions of the Customs Act, 1962.

3. The Original Adjudicating Authority i.e. Addl. Commissioner of Customs, CSI Airport, Mumbai vide a common order i.e. OIO No. ADC/AK/ADIN/99/2018-19 dated 06.06.2018, ordered for absolute confiscation of gold collectively weighing 1405 gms (24 kt purity) valued at Rs.38,87,473/-, 02 new 1-Phone 6 (64GB) collectively valued at Rs. 60,000/-, and one new laptop of "Dell Inspiron" brand valued at Rs. 43,000/- under Section 111(d), (1) and (m) of Customs Act, 1962. A penalty of Rs. 4,50,000/- under section 112(a) & (b) of the Customs Act, 1962 was imposed on Mr. Mohammed Ashraf Ansari(Applicant No.1). A penalty of Rs. 2,00,000/- under section 112(a) & (b) of the Customs Act, 1962 was imposed on Mohammed Imran Ansari (Applicant No.2)

4. Aggrieved by the said order, the applicants filed an appeal before the Appellate Authority i.e Commissioner of Customs (Appeals), Mumbai - III who vide a common order i.e. Orders-In-Appeal No. MUM-CUSTOM-PAX-APP-233-234/2019-20 dated 26.06.2019 (DOI: 04.07.2019) [F.No. S/49-265/2018] rejected the Appeal filed by the Applicants.

5. Aggrieved with the above orders, the aforesaid Applicants have filed these Revision Applications inter alia on the grounds that;

i) that the Applicant No. 1 was found with Gold which was valued at Rs.38,87,743/-

ii) That based on the aforesaid recovery, Applicant No. 2 was intercepted as he had come to receive Applicant No. 1.

iii) Applicants requested to set aside the Order as Gold is not prohibited and in similar case option have been given by various authorities.

iv) Requested to set aside the Personal penalty imposed on Applicant No. 2 as he was implicated only on the statement made.

6. Personal hearings in the case was scheduled for 14.11.2022. Shri Prakash Singharani, Advocate attended the physical hearing on 14.11.2022 on behalf of both the Applicants. He submitted that gold is not a prohibited item under Customs Act. He requested to allow redemption of goods on reasonable fine and penalty.

7. Government observes that the AA has considered the point of redemption of gold and penalty imposed only as that was the only argument raised by the applicant before the AA. Similarly the Revision Application is also limited to the redemption of gold. The Government has gone through the facts of the case and found the following:

i) Applicant no. 1 was intercepted near the Exit gate, after he had cleared himself through Customs by opting green channel. The detailed examination of his baggage resulted in recovery of 27 gold pieces collectively weighing 1405 gms (24 kt purity) valued at Rs 38,87,473/-, 02 new 1-Phone 6 (64GB) collectively valued at Rs. 60,000/-, and one new laptop of "Dell Inspiron" brand valued at Rs. 43,000/- The applicant had not declared the same on arrival, as required under Section 77 of the Customs Act, 1962. The same was detected only after the detailed examination of the AIU officers.

ii) Applicant no.1 revealed has admitted that he is not the owner of the seized goods and one Mr. Zuber Rauf of Sharjah handed over to him rectangular black coloured "Geepas" mark multimedia speaker comprising with seized gold,

one laptop and two I-phones; that he (Zuber) is the owner of all these goods. He has also categorically admitted that he has carried the seized goods for a monetary consideration of Rs. 6,000/-.

iii) Applicant no.1 revealed that he had smuggled the gold for monetary consideration.

iv) Applicant no. 1 revealed that Applicant 2 had made arrangements of free flight tickets for travel from Mumbai to Dubai and back. Applicant 2 in his statements has admitted that he was aware that Applicant 1 was carrying the goods under seizure on his arrival from Dubai on 14.03.2017. He has also admitted that he was supposed to get Rs. 2000/- on handing over the impugned goods to one Mr. Sameer Shaikh as per the directions of Mr. Zuber Rauf of Sharjah. Both Applicants have admitted their respective role in the entire episode of instant case which establishes that they were actively engaged in instant episode of smuggling.

8. From the above, Government finds that the Applicants had used an innovative method to hoodwink the Customs and smuggle out the Impugned gold without Customs duty being discharged on the same. The Applicants had meticulously pre-planned the method adopted to smuggle the gold along with other accomplices who are abroad and had adopted an ingenious method to avoid Customs and payment of duty. Had it not been for the alertness exhibited by the officers of AIU Customs, the applicants would have been successful in smuggling out the gold and evading Customs duty. It is clear that the applicants had resorted to this innovative and ingenious method to smuggle the goods into the country. By this action, it is clear that applicants had no intention to pay the Customs duty. Applicant No.1 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 to evade Customs duty had been adopted.

The applicants 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 Applicants had rendered themselves, liable for penal action.

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".

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 with the prescribed conditions has made the impugned gold

“prohibited” and therefore liable for confiscation and Applicant No.1 liable for penalty.

11. 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”.*

12. Government also observes that the manner in which the gold was smuggled i.e. by using an innovative and ingenious method of concealing the gold by the Applicant 1 inside multimedia speaker reveals the innate intention

of the Applicants. It also reveals their criminal bent of mind wherein, this method was adopted by them in tandem with a clear intention to evade duty and smuggle the gold into India. All these have been properly considered by the Appellate Authority and the lower Adjudicating Authority.

13. The main issue in the case is the manner in which the impugned gold was being brought into the Country. The gold was ingeniously concealed in the multimedia speaker. Also, the gold is of maximum purity which indicates that the same was for commercial use. 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 AIU Officers, 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. The order of the Appellate authority upholding the absolute confiscation order of the adjudicating authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

14. The discretion to release the gold is based on various factors such as manner of concealment, quantity, attempt of smuggling with impunity, etc. Commissioner Appeals has also categorically held that *".....The material on record suggest that the passenger who is a driver was engaged by Mr. Mohammed Imran Ansari who is in the business of rearing goats were in touch with one Mr. Zuber Rauf who himself is a driver at Sarjah and Mr. Zuber Rauf*



*was arranging the necessary logistics for smuggling of 24 Kt pure gold by way of clever concealment to avoid detection at CSI Airport, Mumbai. Both the appellants were admittedly given money for operating as carrier and facilitator in smuggling of gold. Though nothing has been investigated as regards to identity of Mr. Zuber Rauf but his status as driver in Sarjah suggest that there was a syndicate who was organizing large scale smuggling of gold by arranging carriers from India who used to visit abroad only for the purpose of bringing gold in a concealed manner and thereby avoiding payment of duty. In such cases of organized smuggling of gold redemption can not be claimed as a matter of right by professional carriers who were engaged for monetary consideration". In this case, the Government finds that the lower authorities have rightly considered all these factors while denying redemption.*

15. In view of the above Government finds that both applicants admitted their role in this smuggling case and also have confessed that they did it for monetary consideration. Therefore, Government holds that the penalty of 4,50,000/- imposed on Applicant No.1 and penalty of Rs. 2,00,000/- imposed on Applicant No.2 under section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed by them. The Government does not find it necessary to interfere in the order passed by the lower authorities.

16. The Applicants 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 of the seized gold i.e. 27 gold pieces collectively weighing 1405 gms (24 kt purity) valued at Rs38,87,473/- is proper and judicious and also the penalty imposed on both the applicants 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. The Revision Applications filed by both applicants are hereby, dismissed.

*Shrawan*  
3/2/23  
( SHRAWAN KUMAR )

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

185-186  
ORDER No. /2023-CUS (WZ) /ASRA/

DATED 03.02.2023

To,

1. Mr. Mohammed Ashraf Ansari, R/o 79, Fanuswala Building, room no. 45/B, Shaikh Hafizuddin Marg, M.A.Road, Mumbai 400008.
2. Mr. Mohammed Imran Ansari, R/o-184, Bootwala Building, Room no. 16, Ground floor, JunaBunkhana, Aishabai ki Chawl, M.A.Road, Mumbai 400008.
3. The Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal – 2, Sahar, Mumbai – 400 059.

Copy to:

4. Shri P. K. Shingarani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai 400051.
5. Sr. P.S. to AS (RA), Mumbai.
6. Guard File.
7. File Copy.
8. Notice Board.