

REGISTERED  
SPEED POST



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

**F.No. 371/399/B/WZ/2022-RA**

2022

Date of Issue

11.01.2024

ORDER NO. 19 /2024-CUS (WZ) /ASRA/MUMBAI DATED 9.01.2024  
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 : Shri. Mohammad Irfan (deceased on 25.12.2021),  
[This Revision Application has been filed by Mrs. Yasmin,  
his widow / legal heir].

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

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-1935/2021-22 dated  
16.03.2022 issued on 17.03.2022 through S/49-  
1392/2021/AP passed by the Commissioner of  
Customs (Appeals), Mumbai – III.

**ORDER**

This revision application has been filed by Mrs. Yasmin wife / widow of Shri. Mohammad Irfan (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1935/2021-22 dated 16.03.2022 issued on 17.03.2022 through S/49-1392/2021/AP passed by the Commissioner of Customs (Appeals), Mumbai – III. It is informed that applicant i.e. Shri. Mohammad Irfan has expired on 25.12.2021 and Mrs. Yasmin is his widow and legal heir.

2. Brief facts of the case are that on 09.01.2019, the Officers of Customs had intercepted the Applicant at Chhatrapati Shivaji Maharaj International Airport [CSMIA], Mumbai where he had arrived from Jeddah by Air India Flight no. AI-932 / 09.01.2019. When screening his baggage, the BSM Officer had noticed some suspicious images and had diverted the applicant to the Customs counter for detailed examination. Before examination of the baggage, the applicant had been asked whether he was carrying any contraband or dutiable goods, to which he had replied in the negative. Examination resulted in recovery of 02 nos of gold biscuits weighing 46 grams from his handbag and 02 nos of gold rods weighing 499 grams which had been concealed in the handle of the strolley. The 545 grams of gold were assayed through a Government Approved Valuer who certified that the crude gold was of 24 KT purity, totally weighed 545 grams and was valued at Rs. 15,99,847/-.

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, CSMIA, Mumbai vide his ex-parte Order-In-Original No. ADC/VDJ/ADJN/96/2020-21 dated 12.03.2021, ordered for the absolute confiscation of the 02 gold

biscuits and 02 rods of crude gold, collectively weighing 545 grams, valued at Rs. 15,99,847/- under Section 111 (d), 111(l) and 111(m) of the Customs Act, 1962. Further, a penalty of Rs. 1,50,000/- was imposed on the applicant under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the appellate authority i.e. Commissioner of Customs (Appeals), Mumbai – III who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1935/2021-22 dated 16.03.2022 issued on 17.03.2022 through S/49-1392/2021/AP did not find it necessary to interfere in the OIO passed by the OAA.

5. Aggrieved by this Order, the revision application has been filed by Mrs. Yasmin widow of the applicant viz, Shri. Mohammad Irfan from whom the impugned gold had been recovered; the grounds of revision are as under;

5.01. that the impugned order was contrary to the facts and circumstances of the case and provisions of law; that it was a miscarriage of justice; that the AA had gravely erred in not considering all the submissions of the Applicant in proper perspective; that the limitation period with respect to the SCN had not been considered; that on the issue of limitation, reliance was placed on the undermentioned case laws;

(a). Purushottam Jajodia vs. DRI, Delhi [2014 (307) E.L.T. 837 (Del.)]

(b). Iqbal Hussain vs. Union of India [2017 (351) E.L.T. 145 (Del.)]

5.02. that the OIO had been issued in gross violation of principles of natural justice insofar as the adjudicating authority had failed to grant personal hearing to the Applicant before passing the Order-in-Original contrary to provisions contained in Act, that since the Applicant had not been served with any notice of hearing and case was decided ex-parte, the Order-in-Original passed was liable to be set aside; that even though Order-in-Original laid down the personal hearing dates viz, 05.02.2020, 11.09.2020 and 04.03.2021 that these notices had not served been upon him and therefore the Applicant could not appear before the adjudicating authority; that the OIO passed on 12.03.2021 without providing

any personal hearing to the Applicant was in violation of natural justice; reliance is placed on the undermentioned case laws;

(a). Hitech Projects Pvt. Ltd. Vs Union of India [2020 (39) G.S.T.L. 388

(Guj.)]

(b). Bharath Wheel Aligners Vs State Tax Officer, Erode [2020 (42) G.ST.L.499 (Mad.)]

(c). Urbanclap Technologies India Pvt. Ltd. Vs State Tax Officer, Chennai

[2020 (41) G.ST.L. 440 (Mad.)]

5.03. that the OAA had disposed of the goods of the Applicant without giving any reason, which was in violation of principles of natural justice and equity; that act of disposing of the gold was not only illegal but also perverse.

5.04. that the OAA had proceeded on pre-conceived and wrong notion that gold was 'prohibited goods' for import; that the following provisions and law have been invoked wrongly viz, (a). Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, (b). Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, and (c). Foreign Trade Policy, (d). Section 2 (33) of the Customs Act, 1962, (e). Notification No. 50/2017-Cus dated 30.06.2017 specifying and imposing conditions; that in terms Section 2 (33) of the Customs Act, 1962, 'prohibited goods' meant any goods, the import or export of which is subjected to any prohibition under this Act or any law in force for the time being; that as per the Foreign Trade Policy, prohibited goods were those whose import or export was not permitted; that Notification No. 50/2017 dated 30.06.2017 referred by the investigation, provided for import of specified items that can be imported by a passenger subject to fulfillment of certain conditions; that this itself established that gold was not prohibited goods; Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 cannot be read in isolation but has to be read with provisions of Section 11 of the Customs Act, 1962; that if, conditions of notification were not complied with, goods could be held liable to confiscation but the same should not be construed to be prohibited goods liable to absolute confiscation; that reliance was placed on the following case laws;

(a).In the case of Yakub Ibrahim Yusuf Versus Commissioner of Customs, Mumbai [2011 (263) E.L.T. 685 (Tri. Mumbai)], the Hon'ble Tribunal held - Confiscation Prohibited goods Scope of Term prohibited goods refers to goods like arms, ammunition,

addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole, and makes them liable to absolute confiscation - It did not refer to goods whose import is permitted subject to restriction, which can be confiscated for violation of restrictions, but liable to be released on payment of redemption fine since they do not cause danger or detriment to health.

(b). In the case of Commr. of Customs (Preventive), West Bengal v. India Sales International reported in 2009 (241) E.L.T. 182 (Cal.). Hon'ble High Court while deciding whether 'prohibited' has to be read as 'prohibited absolutely, held that the Court cannot insert any word in the statute since it is in the domain of the legislators. The Hon'ble High Court has also held that option given under Section 125 of the said Act in respect of prohibited goods and right given to authorities for redemption of the confiscated goods cannot be taken away by Court by inserting a particular word therein. The Hon'ble High Court further held that power has been given by legislators to a particular authority to act in a particular manner and the said authority must act accordingly and not otherwise at all. Therefore, the redemption of confiscated gold, on an option to pay fine in lieu of confiscation was not against the provisions of Section 125 of the Customs Act.

(c). In the matter of T. Elavarasan Versus Commissioner of Customs (Airport), Chennai 2011 (266) E.L.T. 167 (Mad.), the Hon'ble High Court had held - Release of seized goods Provisional release Gold chains brought by petitioner from Singapore seized on the ground of non-declaration on arrival - Petitioner living abroad for more than six months and entitled to import upto 10 kgs of gold - Gold not a prohibited item Option available to owner of goods or person from whom goods seized, to pay fine in lieu of confiscation - No evidence produced to show that petitioner not entitled to get goods released on payment of customs duty and penalty as per Notification No. 13/2003-Cus. Impugned gold jewellery directed to be released provisionally on payment of customs duty and redemption fine - Provisional release subject to adjudication proceedings -

(d). The Hon'ble Calcutta High Court in the matter of Commissioner of Customs (Preventive) Versus Uma Shankar Verma [2000 (120) E.L.T. 322 (Cal.)] held - Confiscation - Absolute confiscation of prohibited goods - Redemption of prohibited goods was the discretion of department - If the goods were prohibited, the option to confiscate them without giving any option to pay fine in

lieu thereof was with the Customs authorities but when the goods were not prohibited, the Customs authorities have no other option but to grant an option to the assessee to pay a fine in lieu of confiscation and allow the goods.

(e). In a revision application filed before the Government of India, IN RE: ASHOK KUMAR VERMA [2019 (369) E.L.T. 1677 (G.O.L)], it was held that Confiscation/ Absolute confiscation Smuggling of gold - Failure to declare gold to Customs Authorities on arrival at Airport with intention to evade Customs duty. Gold not notified as prohibited item and unusual method of concealment of gold by changing its form into wire for concealment in beading of stroller bag would not make it prohibited item - Absolute confiscation not proper - Commissioner (Appeals) should have provided an option to assessee to redeem confiscated goods on payment of Customs duties, redemption fine and penalty. Assessee permitted to redeem confiscated gold within 30 days on payment of Customs duty, fine of Rs. 4,50,000 and penalty as already imposed Sections 111 and 125 of Customs Act, 1962. - Prohibited goods is a distinct class of goods which can be notified by the Central Government only and the goods cannot be called as prohibited goods simply because it was brought by any person in violation of any legal provision with the intention to evade payment of customs duty. There is a clear difference between the prohibited goods and general regulatory restrictions imposed under the Customs Act, 1962 or any other law with regard to importation of goods. While prohibited goods were to be notified with reference to specified goods only which are either not allowed at all or allowed to be imported on specified conditions only, regulatory restrictions with regard to importation of goods is generally applicable irrespective of the individual case like goods will not be imported without declaration to the Customs and without payment of duty leviable thereof, etc. Such restriction was clearly a general restriction/regulation, but it cannot be stated that the imported goods become prohibited goods if brought in contravention of such restriction.

- 5.05. that the OAA had gravely erred in his finding that the Applicant's earning did not support the purchase of seized gold; that applicant had been working in Saudi Arabia since 2010 with an attractive salary of 4,000 Riyal per month; that at para 5 of the OIO it was noted by the OAA that the applicant was not a frequent traveler; that this was the first time that he had carried gold which was a mistake committed by him; that he was the legitimate owner of the gold; that a lenient view be taken;

- 5.06. that the AA upheld the penalty which had been imposed on the applicant which was blatant ignorance as the applicant had passed away; that it was settled law that no recovery proceedings can be initiated against a dead person and the same has been held by the Hon'ble Tribunal in the matter of New Sharada Industries Versus Commissioner of C. Ex., Bangalore (2017 (347) E.L.T. 180.

Under the circumstance, the applicant has prayed to the revision authority to (a). set aside the impugned Order-in-Appeal No. MUM-CUSTOM-PAX-APP-1935/2021-22 dated 16.03.2022 passed by the AA, (b). to release goods; (c). pass any such other or further order(s) or direction(s) in favour of the Applicant as deemed fit and proper in the interest of justice.

6. Applicant has filed an application for condonation of delay attributing that the delay was on account of the untimely and unfortunate demise of the applicant; that there was a delay of 47 days; that they had filed the revision application on 10.08.2022; that they had received the OIO on 23.03.2022

7. Personal hearing in the case was scheduled for 07.09.2023, 14.09.2023, 04.10.2023, 11.10.2023. Mohd. Faraz Anees, Advocate who had filed a vakalatnama in this case duly authorized by Mrs. Yasmeen, wife of the deceased Shri. Mohammad Irfan (applicant), informed that Shri. P. Pathak, Consultant would attend the hearing on her behalf as he was not keeping well. Shri. P. Pathak, Consultant appeared online on 04.10.2023 and submitted that applicant has expired and application has been filed by wife of applicant who is legal heir. He further submitted that applicant was working in UAE and had purchased gold out of his savings. He further submitted that SCN was after seizure period was over. He requested to allow redemption of goods on fine and penalty to wife as family of deceased applicant who was sole bread earner is in dire state.

8. On the issue of condonation of delay, Government notes that the revision application has been filed on 10.08.2022 The OIA dated 16.03.2022 was issued on

17.03.2022. The applicant has at sr. no. 5 of their FORM No. CA-8 stated that the OIA had been communicated to them on 23.03.2022. The same has not been refuted by the respondent. Government notes that the appealable period of 3 months ended on 21.06.2022. Thereafter, an extension / condonable period of a further 90 days is available to the applicant and this would have ended on 19.09.2022. Government finds that applicant had filed revision application on 10.08.2022 which falls within the aforesaid extension / condonable period. Therefore, the application for condonation of delay filed by the applicant is accepted and Government condones the delay.

9. The Government has gone through the facts of the case and notes that the applicant had not declared the gold while availing the green channel facility. The impugned 02 nos of gold rods, weighing 499 grams had been concealed by the applicant in the handle of the strolley bag and this was done with the express intention of hoodwinking the Customs and evading payment of Customs duty. The applicant clearly had failed to declare the goods to the Customs at the first instance, as required under Section 77 of the Customs Act, 1962. The act committed by the applicant reveals that it was conscious and pre-meditated. Had he not been intercepted; the applicant would have gotten away with the gold which had been cleverly concealed. Therefore, the confiscation of the gold was justified.

10. 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”.

11. 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’, thus, liable for penalty.

12. 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*

13. The quantity of the gold under import is small and is not of commercial quantity. The 02 nos of gold biscuits were found in the handbag carried by the applicant and the 02 nos of gold rods, weighing 499 grams had been concealed in the handle of the strolley. There are no allegations that the applicant is a habitual offender and was involved in similar offence earlier. The quantity of gold and 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. Under the circumstances, the seriousness of the misdemeanour is required to be kept in mind when using discretion under Section 125 of the Customs Act, 1962 and while imposing quantum of penalty.

14. 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 grant an option to release the impugned gold on payment of a redemption fine.

15. Government finds that a plea has been made that the applicant had been working in Saudi Arabia since 2010. The OAA had decided the case ex-parte and this aspect of eligibility has not been looked into. Government notes that in the OIO at para 5, it has been recorded that the arrival and departure details revealed that applicant was not a frequent traveller. Government finds that the ends of justice would be served, if this contention about eligibility made by the applicant is verified. Government directs the respondent to cause verification on the issue of eligibility of concessional rate to the applicant and duty may be accordingly, charged.

16. Government notes that a penalty of Rs. 1,50,000/- has been imposed on the applicant by the OAA under Section 112(a) of the Customs Act, 1962, which has been upheld by the AA. Government notes that in the impugned OIA, at para 4, the AA has noted that the applicant is no more. Government finds that since, the applicant has expired, the AA had erred in upholding the penalty imposed on the applicant. It is well settled law, that when the applicant has expired, the personal penalty imposed abates and does not pass on to another person. Therefore, Government finds that the penalty imposed on the applicant abates as he is no more.

17. Accordingly, the Government sets aside the absolute confiscation upheld by the appellate authority in the impugned order and modifies the same as under;

(a). the 02 gold biscuits and 02 gold rods, totally weighing 545 grams and valued at Rs. 15,99,847 are allowed to be redeemed on payment of a

redemption fine of Rs. 3,20,000/- (Rupees Three Lakhs Twenty Thousand only);

(b). Since, the applicant has expired on 25.12.2021, the personal penalty of Rs. 1,50,000/- imposed on him by the OAA under Section 112(a) of the Customs Act, 1962 and upheld by the AA in the impugned OIA, abates / ceases to exist.

18. Revision Application is disposed of on the above terms.

  
( SHRAWAN KUMAR )

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

**ORDER No. 19/2024-CUS (WZ) /ASRA/MUMBAI DATED 07.01.2024**

To,

1. Mrs. Yasmin for the late Shri. Mohammad Irfan, R/o. Maliyon Ka Rajbagh, Kaluram Ji Ki Bawari, Soorsagar, Jodhpur – 342 024.
2. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, T2, L2, Sahar, Andheri (E), Mumbai – 400 099.

Copy to:

1. Mr. Devesh Tripathi / Mohd. Faraz Anees, Advocates, C-71, 7<sup>th</sup> Floor, C – Wing, Mittal Court, Nariman Point, Mumbai – 400 021.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.