



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. 371/41/B/14-RA / 6698

Date of Issue 02.09.2021

ORDER NO. <sup>203</sup>/2021-CUS (WZ)/ASRA/MUMBAI DATED 25.8.2021 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 Chhunchha Rajnikant Mansukhlal

Respondent : Commissioner of Customs, SVPIA, Ahmedabad

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. AHM-CUSTM-000-APP-354-14-15 dated 03.12.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad.

ORDER

This revision application has been filed by Shri Chhunchha Rajnikant Mansukhlal (herein referred to as Applicant) against the Order in Appeal No. AHM-CUSTOM-000-APP-354-14-15 dated 03.12.2014 passed by the Commissioner of Customs (Appeals), Ahmedabad..

2. The Officers of Customs intercepted the Applicant as he was walking out from the green channel. He had declared that he was not carrying any dutiable goods. On being frisked with a metal detector a beep sound was heard indicating the presence of metal. On enquiry the Applicant took out and a gold chain totally weighing 215.680 grams totally valued at Rs. 5,79,015/- ( Rupees Five lakhs Seventy nine thousand and fifteen).

3. After due process the original adjudicating authority vide order no. 10/JC/SVPIA/O&A/2014 DATED 03.04.2014 confiscated the gold jewelry but gave option to redeem the gold on payment of Rs. 2,00,000/- ( Rupees Two lakhs ) as redemption fine under section 125 and imposed a penalty of Rs. 2,00,000/- under section 112 (a) of the Customs Act, 1962.

4. Being aggrieved with the impugned order, The Applicant filed appeal before the Commissioner (Appeals) who vide its order no. AHM-CUSTOM-000-APP-354-14-15 dated 03.12.2014 rejected the Appeal of the Applicant.

5. Aggrieved with the order of the Appellate authority, the Applicant has filed this revision application interalia submitting that ;

5.1 Appellant arrived at SVP International Airport, Ahmedabad on 12.03.2014 to see his dying father in his last days, who has also passed away. Appellant had stayed in India only for a short visit of a few days and has also returned to U.A.E. from India.

5.2 Appellant visited India for a short visit only after his stay abroad over six months. Appellant had also last visited India in 12-07-2013 and had left from India in 16-07- 2013. Thus, when Appellant arrived in India on 12-03-

2014, he has come to India after stay abroad for 239 days. Appellant brought Gold jewellery which he was wearing as a Gold Kada ( Rhodium Polish) weighing 116.680 grams and Gold Chain weighing 99.000 total weighing 215.680. Therefore, the seized/confiscated gold jewellery which is not in a commercial or trade quantity, should not have been confiscated or it should have been allowed on lenient conditions to appellant as eligible passenger to bring gold into India.

5.3 The said Gold jewellery has been seized and now confiscated. There wa no mala fide intention to bring seized gold or to evade duty thereon. The seized gold is not meant for any commercial purpose. The O-I-O/O-I-A passed by adjudicating authority is very harsh, unjustified qua this appellant, as the case is on a totally incorrect base relied upon and Order is without justification or reasonable belief that the seized Gold Bangles are liable to confiscation. We now under stand that as a normal rule such confiscation is ordered in the cases of large scale smuggling in an organized manner. However, this is neither a case of large scale smuggling nor any organized smuggling. This is not the case where gold is required to be confiscated. The seized gold could have been released on duty on lenient conditions. Hence, O-I-O/O-I-A deserves to be modified. While allowing redemption for home consumption on very heavy fine and penalty, which requires judicious reconsideration for modification.

5.4 This being first ever case against the appellant, he deserves sympathetic approach while quantifying the R/F and penalty. The R/F and Penalty imposed is very harsh for him. Thus, appellant pray for leniency of R/F and penalty imposed, if the entire R/F and penalty can not be set aside. The appellant also point out that in many decisions where the release of gold confiscated was allowed in the cases where the gold in question had not been declared by the concerned passengers.

5.5 It is a settled law that "substantive benefit" available should not be denied. This principle is applicable in this case. "Concession as substantive benefit" are provided with rational equitable justice to compensate unavoidable losses faced by Appellant and therefore, liberal interpretation requires to be kept in mind to the scheme of Government. "Concession as a substantive benefit" must reach to those for whom it is intended. The

interpretation of Rules while considering "Concession" should be to extend substantive benefits and not to defeat such available benefits. Appellant request to allow substantive benefit of Concession claimed and permitted by the established law. O-I-0/0-I-A for denial of Concession in the present case is not in accordance with the law. O-I-0/0-I-A are not sustainable and requires to be set aside allowing Concession.

5.6 Allegation of seizure of Gold jewellery wt. 215.680 gms as "Undeclared" is not supported by any evidence or any reasonable belief that said Gold wt. 215.680 gms is liable to confiscation under provisions of Section 111 of Customs Act 1962 and in absence of compliance of any such mandatory requirement, the seizure itself of said Gold wt. 215.680 gms worth Rs. 579,015/- is not justified/sustainable, and confiscation deserves to be vacated/quashed and set aside.

5.7 The entire case is made out on erroneous base that appellant was passing through "Green Channel" and not declared said Gold jewellery wt. 215.680 gms. This allegation is not supported by any acceptable or reliable evidence. Thus, the base of the case and finding by adjudicating authority is incorrect and not having any valid support.

5.8 It is fact on record that Appellant had last visited India in 2013 and had left from India in 2013. Therefore, he is also the eligible passenger to bring gold into India upto 1 Kgs on payment of duty @ 10 % under Notification No. 12/2012-Cus [Sr. no. 321]. Such duty comes Rs. 57,902/- , whereas no duty is recovered, which can not be in excess payment of duty requires to be allowed to Appellant.

5.9 It is submitted that R/F is normally to wipe out margin of profit earned by wrongful act done to evade duty, whereas in this case, Gold jewellery is his own and there is no commercial angle or profit involved for this. Assuming that appellant could have saved about Rs. 57,902/- @ 10 % ov value [Approx]. Hence, R/F in excess of Rs. 57,902/- is not justified, although, appellant prays for no R/F.

5.10 As per section 112 *ibid*, such penalty in the case of dutiable goods [other than prohibited goods], may be to a penalty [not exceeding the duty sought to be evaded on such goods. Thus, in this case, the penalty could

not have been more than Rs. 57,902/- as the duty payable. Hence, penalty imposed in excess of Rs. 57,902/- deserves to be set aside.

5.11 The O-1-0/0-I-A have not considered the prime fact that the person on whose any "act, omission or abetment" the goods becomes liable to confiscation, then such person will be liable to penalty u/s 112(a) of the customs Act 1962. However, in this case penalty imposed u/s 112(b) *ibid*. It is submitted that the person who deals with already smuggled goods brought improperly into India, would be liable to Penalty under section 112(b) which clearly provides that who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable. Hence penalty u/s 112(b) is not justified.

5.12 Imposing penalty u/s 112(b) instead of u/s 112(a) is a fatal and consequently the penalty imposed u/s 112(b) of the Customs Act 1962, deserves to be set aside.

5.13 The Applicant submitted case laws in favour of his case and prayed for setting aside or modify the impugned O-1-A No. AHM-CUSTOM-000-APP-354-14-15 dated 03-12-2014 issued by the Commissioner of Customs (Appeals), Ahmedabad. And/or (ii) Release seized gold on more lenient redemption fine u/s 125 of Customs Act, 1962 Or (iii) Set aside the entire personal penalty imposed u/s 112(b) of the Customs Act or (iv) Pass any other order/direction, as deemed fit, in facts and circumstances of the case.

7. Personal hearings in the case was scheduled in the case on 13.08.2021. Shri P.P. Jadeja Advocate appeared online and reiterated the submissions. He submitted that the redemption fine and penalty imposed on a genuine eligible passenger are excessively high. He requested to impose nominal redemption fine and penalty as passenger had come after working abroad for one year. He requested that re-export should be allowed. Nobody attended the hearing on behalf of the Applicant or the department.

8. The Government has gone through the facts of the case. The Applicant should have declared the gold jewelry as required under section 77 of the

Customs Act, 1962. He however informed that he was carrying gold ornaments after he was subjected to a personal search with a metal detector. Thus the confiscation of gold jewelry is justified.

9. Government however notes that the quantity of gold jewelry under import is small. There are no allegations that the gold was ingeniously concealed. The ownership of the gold is not disputed. The Applicant had brought the gold for his personal use. There is no evidence on record to infer that he was a carrier or part of some organized smuggling racket. The case therefore appears to be more of an issue of non-declaration than clandestine attempt at smuggling. Above all the Applicant is an eligible passenger having come to India after staying abroad for a year. The Hon'ble Supreme Court of India in a recent case of Union Of India & Ors. V/s M/s. Raj Grow Impex & Ors., in para 71 of the order states *" 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."*

10. The original adjudicating authority has used his discretion in allowing the goods to be redeemed under section 125 of the customs Act, 1962 and the same is upheld by the Appellate authority. The Applicant has prayed for reexport of the gold jewelry and reduction of redemption fine and penalty. In view of the facts narrated above Government notes that the redemption fine and penalty constitutes approx. 70 % of the value of the gold. The customs duty

component if added exceeds the value of the gold, Government therefore is inclined to take a reasonable view in the matter. The impugned gold jewelry is allowed re-export. The value of the gold jewelry is Rs. 5,79,015/- redemption fine of Rs. 2,00,000/- is reduced to Rs. 1,25,000/- ( Rupees One lakh Twenty five thousand ). The penalty of Rs. 2,00,000/- imposed under section 112 (a) is also reduced to Rs. 1,00,000/- ( Rupees One Lakh).

11. Revision application is disposed of on above terms.

*Shrawan*  
*25/8/21*

( SHRAWAN KUMAR )

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

ORDER No 203/2021-CUS (WZ) /ASRA/MUMBAI

DATED: 25 08.2021

To,

1. Shri Chhunchha Rajnikant Mansukhlal, Room No. 40, 2<sup>nd</sup> floor, Khumrajbhavan, 8<sup>th</sup> Khetwadi Gully, Back Road, Grant Road, Mumbai 400 004.
2. The Commissioner of Customs, SVPIA Airport, Ahmedabad.

Copy to:

1. Sr. P.S. to AS (RA), Mumbai.
2. Guard File.
3. Spare Copy.