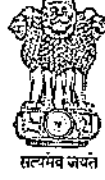


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

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F.No. 373/242/B/15-RA / 5221

Date of Issue / 2.09.2021

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ORDER NO. <sup>206/2021-</sup>CUS (WZ)/ASRA/MUMBAI DATED 26.8.2021 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.

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Applicant : Shri Khaza Saleemuddin Shareef

Respondent : Commissioner of Customs, C. Ex. & S. Tax. Hyderabad

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. HYD-  
CUS-000-APP-002-15-16 dated 30.04.2015 passed by the  
Commissioner of Customs & C. EX. & S. Tax, (Appeals)  
Hyderabad.

ORDER

This revision application has been filed by Shri Khaza Saleemuddin Shareef (herein referred to as Applicant ) against the Order-in-Appeal No. No. HYD-CUS-000-APP-002-15-16 dated 30.04.2015 passed by the passed by the Commissioner of Customs & C. EX. & S. Tax, (Appeals) Hyderabad.

2. On 05.02.2014 the officers of AIU intercepted the Applicant at the Rajiv Gandhi International Airport, Hyderabad, and seized four gold bars and one gold coin totally weighing 566.56 gms, valued at Rs. 17,56,336/- ( Rupees Seventeen lakhs Fifty six thousand Three hundred and Thirty six ). The gold bars and coin was recovered from the socks worn by the Applicant and he did not file declaration that he was carrying the gold.

3. After due process of the law vide Order-In-Original No. 29/2014-Adjn.CUS (ADC) dated 27.02.2014 the Original Adjudicating Authority ordered confiscation of the gold but allowed redemption of the same on payment of Rs. 75,000/- ( Rupees Seventy five thousand) and imposed a penalty of Rs.1,00,000/- ( One Lakh) under Section 112 (a) and (b) of the Customs Act,1962 on the Applicant.

4. Aggrieved by this order the department filed an appeal with the Commissioner of Customs (Appeals), Commissioner (Appeals) vide his order No. HYD-CUS-000-APP-002-15-16 dated 30.04.2015 observed that the redemption fine and penalty imposed on the Applicant was meagre and increase the redemption fine to Rs. 2,00,000/- ( Rupees Two lakhs) and also enhanced the penalty to Rs. 2,00,000/- ( Rupees Two lakhs) rejected the Appeal.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 At the outset, the applicant would like to submit that the impugned order of the learned Commissioner (Appeals) is not sustainable on the following grounds.

a) In the Appeal Pled by the department as per the review order No. 05/2014- Customs dated 02.06.2014, the Reviewing Authority wrongly placed reliance in the decision of Hon'ble Supreme Court in the case of Commissioner of Customs, Mumbai vs Mansi Impex 2011 (270) E.L.T. 631 (S.C.)

b) The Hon'ble Apex Court has not fixed any formula for imposition of fine and Penalty under Customs Act, 1962 but only reiterated the importance market enquiry for imposition / quantum of penalty and redemption fine in the case of goods held liable for confiscation.

5.2 It is submitted that the Hon'ble Supreme Court while dismissing the Revenue Appeal in the said decision held and observed that the Quantum of redemption fine always dependent on determination of market price which is one of the pre-requisites prescribed in statute itself.

5.3 It is submitted that in the instant case Shri Satyanarayana Sharma, Government Registered Valuer assayed the gold, pieces and certified them to be of 99.9% purity and weighing 566.56grams and valued them at Rs.17,56,336/- as per Market prices. Therefore it not the case of the department that market value of case was not determined. Thus reviewing the Order of the Adjudicating authority by relying the decision of Hon'ble Apex Court is misplaced. The above decision of Hon'ble Apex court cannot said have any precedence in the facts and circumstances of the present case.

5.4 The reviewing authority contended that the adjudicating authority clearly established the deliberate involvement of the pax in the smuggling of the gold valued at Rs 17,56,336/- which warranted higher redemption fine and penalty; that the adjudicating authority has imposed lower redemption fine and penalty but has not recorded any reasons for taking a lenient view in this case.

5.5 In this connection, it is submitted that the pax carried the four gold bars and one gold coin inside the socks worn by him only for the purpose of safety and not with an intention to escape detection by the Customs Authorities. Further, it is admitted fact that the pax purchased the gold at Dubai for his own purpose and not carrier of Gold bars. It is to submit that the Gold bars were not concealed by a special effort so as escape examination, in any cavity in the shoes but they were in the shoes only. It was further submitted that the trade practice of carrying or transporting gold in shoes is for safety purpose as in present social and economic circumstances, carrying gold openly combines the risk of losing the same and will also endanger the life of the person carrying the same, hence the passengers adopt different methods of carrying the gold only as a precautionary method.

5.6 In view of the foregoing, It is submitted that the pax has not carried gold bars in ingenious manner. The Adjudicating Authority rightly observed and found that 'the intention behind the provisions of Section 125 is clear that import of goods such as arms, ammunition, addictive substance viz. drugs which would cause danger to the health, welfare or morals of people as a whole cannot be allowed under any circumstances and such goods have to be confiscated, absolutely; However, the impugned good (gold pieces) is not of that kind.

5.7 It is further submitted that the Adjudicating Authority while imposing the fine and penalty in the instant case exercised the discretionary power in an objective manner and it cannot be mechanical way. In any event, the reviewing authority has not discussed about any peculiar facts nor placed any materials to show that the redemption fine imposed were on the lower side. The reviewing Authority has not adduced material evidence to indicate that the Adjudicating Authority acted in whimsical manner and deviated from the norms and the Reviewing Authority has not adduced any material to prove that finding of the Adjudicating Authority, as perverse. It is humbly, submitted that Adjudicating Authority, in similar facts and circumstances, imposed the fine and penalty uniformly in all other cases.

5.8 Further, it cannot be contended that the Adjudicating Authority has not recorded the reasons for imposing the quantum of penalty and fine, it is humbly submitted that that the Passenger is neither a habitual offender nor carrying the said goods for somebody else, nor did he conceal the goods in any ingenious manner.

5.9 From the foregoing, it to submit that the Order of Adjudicating Authority in imposing Fine of Rs. 75,000/- (Rupees seventy Five thousand only) under the provisions of Section 125(1) of the Customs Act, 1962 and Penalty of Rs. Rs.1,00,000/- (Rupees One Lakh only) under Section 112(a) of the Customs Act, 1962 warrants no modification.

5.10 It is further submitted that the Adjudicating Authority while imposing the fine and penalty in the instant case exercised the discretionary power in an objective manner and it cannot be contended that he did in a mechanical way. The reviewing authority has not discussed about any peculiar facts nor placed any materials to show that the redemption fine imposed were on the lower side but simply placed reliance asserting that the apex court referred supra laid down a standard formula that the redemption fine imposable could be upto market value of the imported goods minus the duty chargeable thereon. Similarly the penalty could be up to the value of the goods or five thousand rupees whichever is greater.

5.11 In view of the foregoing, the appellant pray that the Hon'ble Revisionary Authority, Government of India may kindly be set aside the impugned order of Commissioner (Appeals), Hyderabad or pass any other order as may be deemed fit in the facts and circumstances of the case and thus render justice.

6. Personal hearings in the case were scheduled on 02.03.2021, 09.03.2021, 06.04.2021, 13.04.2021, 15.07.2021, and finally held on 22.07.2021. Shri Dwarkanath, Consultant for the Applicant appeared and reiterated earlier submissions. He submitted that his client was not a habitual offender and the

gold was for personal use, therefore the Redemption fine and penalty imposed by the original adjudicating authority should be restored.

7. The Government has gone through the case records, the Applicant has filed this revision application being aggrieved with the order of the Appellate order for increasing the redemption fine and penalty. The Applicant has submitted that the Gold bars were not concealed by a special effort so as to escape examination, in any cavity in the shoes but they were in the shoes only. It was further submitted that the trade practice of carrying or transporting gold in shoes is for safety purpose as in present social and economic circumstances, carrying gold openly combines the risk of losing the same and will also endanger the life of the person carrying the same, hence the passengers adopt different methods of carrying the gold only as a precautionary method. Government however observes that the Applicant did not file a declaration as required under section 77 of the Customs Act, 1962 and therefore the submission that the gold was concealed for safety purposes does not hold water. If the intention of the Applicant in concealing the impugned gold was only for safety purposes he should have filed a declaration as mandated. The fact of the gold being recovered from the socks of the Applicant and the fact that the Applicant did not file a declaration is a clear indication that the Applicant had no desire to declare the gold as per section 77 of the Customs Act, 1962.

8. The Applicant was intercepted and the impugned gold bars and coin was recovered from the socks worn by the Applicant. He did not declare the gold bars and coin and as he did not fulfill the conditions for import and therefore he was ineligible to import gold. The confiscation of the gold is therefore justified. The gold was allowed to be redeemed by the original adjudicating authority, however the Appellate authority increased the redemption fine holding that the redemption fine and penalty imposed by the lower authority was very low. The Applicant has filed this Revision Application for setting aside the order of the Appellate authority.

9. It is further observed that the value of the gold under import is Rs. 17,56,336/- ( Rupees Seventeen lakhs Fifty six thousand Three hundred and Thirty six ). The redemption fine imposed by the Appellate authority is

Rs.2,00,000/- and the penalty imposed is also Rs.2,00,000/-, which amounts to 11.38 % of the value of the gold which is very reasonable considering that there was a clear attempt at clearing the gold without payment of customs duty. In a recent judgement by the Hon'ble Supreme Court in the case of M/s Raj Grow Impex and others Vs UOI states " .....when it comes to discretion, the exercise thereof has to be guided by law; according to the rules of reason and justice; and has to be based on the relevant considerations.....such an exercise cannot be based on private opinion." With regard to the imposition of redemption fine and penalty Government places reliance in the decision of Hon'ble CESTAT, Principal Bench, New Delhi in the case of Commissioner of Central Excise, Bhopal vs. Rama Wood Craft Pvt. Ltd (2008 (225) E.L.T. 348 (Tri. - LB)) (Page Nos. 31 to 33 ) which observed that " *Imposition of penalty is a penal action hence there cannot be cut and dried formulae for quantifying the amount - Attending fact and circumstances, nature and gravity of offences, defence of person and extent of evasion among other things to be taken into account*".

10. In view of the above Government holds that the impugned order of the Appellate authority does not warrant any interference. Revision Application is liable to be dismissed.

11. Revision Application is accordingly dismissed.

*Shrawan Kumar*  
26/8/21

( SHRAWAN KUMAR )

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

ORDER No 206/2021-CUS (SZ) /ASRA/

DATED 26/8/2021

To,

1. Shri Khaza Saleemuddin Shareef, , H. No. 13-8-118, Sherpura Street, Warangal.
2. The Commissioner of Customs, Customs Commissionerate, Hyderabad.

Copy to:

1. Shri Dwarkanath, Consultant, Flat No. 307, Block B, Sri Sai Landmark, Street No. 8, Habsiguda, Hyderabad – 500 007.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.