

**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

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F.No. **371/57/B/2017-RA/2809** : Date of Issue 15.07.2022

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ORDER NO. 207/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 14.07.2022  
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 : Ms. Dalsi Manharlal Chauhan

Respondent : Pr. Commissioner of Customs, Ahmedabad.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal Nos.  
AHD-CUSTM-000-078 & 79-17-18 both dated 06.07.2017  
[(S/49-53/CUS/AHD/2016-17)(S/49-28/CA-/CUS/AHD  
/16-17)] passed by the Commissioner of Customs  
(Appeals), Ahmedabad – 380 009.

**ORDER**

This revision application has been filed by Ms. Dalsi Manharlal Chauhan (herein referred to as Applicant) against the Order in Appeal Nos. AHD-CUSTM-000-078 & 79-17-18 both dated 06.07.2017 [(S/49-53/CUS/AHD/2016-17)(S/49-28/CA-/CUS/AHD/16-17)] passed by the Commissioner of Customs (Appeals), Ahmedabad – 380 009.

2. Briefly stated the facts of the case are that the Applicant was intercepted when she arrived at the Sardar Vallabhbhai Patel International Airport (SVPIA), Ahmedabad on 07.11.2015 from Dubai onboard Spice Jet Flight No. SG-016. Applicant denied having any dutiable goods in her possession. She was asked to pass through the Door Frame Metal Detector (DFMD) which produced a beep sound indicating the presence of metal. Since, it was noticed that her shoes were abnormally heavy, the same were screened which indicated presence of metal inside the sole. The soles of both the shoes were cut open which led to the recovery of 6 gold bars of 100 gms each of 999.9% purity having foreign markings and serial nos. The total weight of the 6 gold bars was 600 gms, having market value of Rs. 15,60,000/- and tariff value of Rs. 14,81,556/-. The applicant had also not declared the impugned goods in the Customs Declaration. The impugned gold was seized.

3. The Original Adjudicating Authority viz, Joint Commissioner of Customs, Ahmedabad vide Order-In-Original No. 33/JC-BP/SVPIA/O&A/2016 dated 26.08.2016, issued on 05.09.2016 through F.No. VIII/10-07/SVPIA/O&A/2016/1087 ordered for the confiscated the 6 gold bars, totally weighing 600 gms and having tariff value of Rs. 14,81,556/- under Section 111(i), (l) & (m) of the Customs Act, 1962. However, option to redeem the goods on payment of redemption fine of Rs. 10,25,899/- was granted to the applicant under Section 125(1) of the Customs Act, 1962

alongwith payment of appropriate duty as applicable. A penalty of Rs. 53,410/- was imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962. Also, a penalty of Rs. 14,81,556/- was imposed on the applicant under Section 114AA of the Customs Act, 1962.

4(a). Aggrieved by the said order, the applicant filed appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Ahmedabad.

4(b). Aggrieved by the said order, the respondent too had filed an appeal before the Appellate Authority, Ahmedabad.

4(c). The Appellate Authority vide his Order-In-Appeal Nos. AHD-CUSTOM-000-078 & 79-17-18 both dated 06.07.2017[(S/49-53/CUS/AHD/2016-17)(S/49-28/CA-/CUS/AHD/16-17)] allowed the department's appeal and the order of the OAA was modified only to the extent holding the impugned gold to be confiscated absolutely. In other words, only the redemption of the impugned gold on payment of a fine held by the OAA was set aside by the AA. The penalties under Section 112(a) and (b) and Section 114AA imposed on the applicant by the OAA were however, sustained.

4(d). The appeal filed by the applicant was rejected by the AA.

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

5.1 that the applicant's brother had gifted the 6 gold bars to the applicant for her wedding; that invoice dated 05.11.2015 had been submitted; that the gold was brought for personal use for the purpose of making ornaments; that it had been merely kept in the shoes for safety purposes; that an oral declaration of the gold had been made to the Customs Officer before the gold was taken out from the shoes worn by her.

5.2. that import of gold is not prohibited; that gold is not mentioned in the list of prohibited items in the import policy.

5.3. that in the undermentioned cases, it has been held that if goods are not prohibited then it is obligatory on the part of Customs to redeem the goods on payment of fine in lieu of confiscation in terms of Section 125 of the Customs Act, 1962.

- (a). Shaik Jamal Basha vs. GOI 1997 (91) E.L.T. 277 (A.P),
- (b). Mohini Bhatia vs. Commr. Of Customs, Sahar, Mumbai 1999 (106) E.L.T. 485 (Tribunal).

5.4. During the hearing the undermentioned cases laws had been furnished by the applicant on the issue of non-applicability of Section 114AA of the Customs Act, 1962;

- (a). Access World Wide Cargo vs. Commr. Of Customs, Bangalore [2022(379)-ELT-120 (Tri-Bang).
- (b). GOI Order in F.No. 375/60/B/2016-RA in the case of Jitender Singh, 2019(369) ELT 1683 (GOI).
- (c). GOI Order in F.No. 375/59/B/2015-RA

Applicant has prayed to allow the redemption of the gold in terms of Section 125 of the Customs Act, 1962 on payment of nominal redemption fine plus duty @ 36.05% or to allow the impugned gold to be re-exported. Applicant has also prayed for setting aside of penalty imposed under Section 114AA or reduction of the same or any other relief as deemed fit.

6. Personal hearings in the case through the video conferencing mode was scheduled for 16.11.2021 / 23.11.2021, 11.01.2022 / 03.02.2022, 23.02.2022 / 02.03.2022, 12.04.2022 / 20.04.2022. Shri. S.S Arora, Advocate for the Applicant appeared on line on 20.04.2022 and reiterated his earlier submissions and stated that the goods belonged to the applicant and requested to allow redemption on reasonable RF. He further submitted that penalty under Section 114AA is not imposable once penalty under Section 112 has been imposed. He requested to revoke the same.

7. The Government has gone through the facts of the case, and observes that the applicant had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The applicant had not

disclosed that she was carrying dutiable goods. The 6 gold bars had been ingeniously kept inside the soles of the shoes worn by her. To recover the impugned gold, the soles of the shoes had to be cut open. The ingenious concealment adopted by the applicant clearly reveals her intention not to declare the gold and thereby evade payment of Customs Duty. Moreover, the gold was in primary form in the shape of bars of high purity and bearing foreign markings, all of which indicates that the same was for commercial use.

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 Applicants 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(a). Government notes that the quantity of gold is quite substantial and was in primary form in the shape of bars. The same had been kept ingeniously concealed in the soles of the shoes worn by the applicant which had to be cut open to recover the same. The applicant had no intention to declare the gold in her possession and applicant had concealed the gold in a manner to hoodwink the law implementing authorities.

11(b). The appellate authority at para 10.3 of the OIA has observed the following;

10.3. *"..... I find that the various contention of the Revenue that the goods ought to have been considered as prohibited goods and the same were liable to absolute confiscation is fully justified. The stay of the passenger abroad was very short. The passenger was not an eligible passenger to bring the gold. I find that the adjudicating authority has observed in the impugned order that in her submissions, the passenger produced an Invoice no. 54216 dated 05.11.2015 issued by M/s. Anjali Jewellers & Goldsmith (LLC), Dubai to say that the gold was purchased and gifted for her wedding; that at the time of drawal of panchanama and deposition made on 07.11.2015, the passenger admitted that she was not having any bill for the purchase of gold; that however, an invoice was produced by her almost after 9 months; that other evidences are also against the passenger and therefore, production of bill at this stage is merely trying to concoct a story and fabricate new evidences and given the evidences and the facts on record, this invoice theory seems to be clearly an afterthought and cannot be give any credence. ...."*

11(c). The Government notes that the gold had been concealed ingeniously to avoid detection and payment of duty. Had it not been due to the alertness and diligence of the Customs Officers, the applicant would have gotten away with the impugned gold without discharging the duty. The Applicant has pleaded for setting aside the Order passed by the Appellate Authority and reduction in the quantum of redemption fine imposed by the OAA while granting option to redeem the impugned gold.

11(d). On considering the quantum, form, manner of concealment and clear attempt to smuggle gold, non-declaration, plea of the applicant insofar as to redeem the goods on a reduced redemption fine, does not deserve consideration. 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. This also would act as a deterrent for attempting to smuggle the gold.

11(e). On the plea of the applicant to allow re-export of the impugned gold, Government notes that the appellate authority has delved on the same that since the impugned gold has been absolutely confiscated, the re-export of the same cannot be allowed. Government finds the same proper and legal.

12(a). With regard to the penalty of Rs. 53,410/- imposed under Section 112(a) & (b) of the Customs Act, 1962 by the OAA and upheld by the AA, the Government finds that the applicant had ingeniously concealed the gold in the soles of the shoes worn by her. Government notes that before screening through the DFMD, the applicant had been given an opportunity to declare the dutiable goods in her possession. Considering the complete facts of the case, the penalty of Rs. 53,410/- imposed on the applicant which is about 3.6% of the tariff value of the impugned gold, is low. But as the respondent have accepted the OIA passed by the AA, the Government finds that the principle of "*no reformatio in peius*" would come into play, which means that a person should not be placed in a worse position, as a result of filing an appeal.

12(b). This principle of "*no reformatio in peius*" is discussed by the *Division Bench of Madras High Court in Servo Packaging Limited Vs. CESTAT, 2016 (340) E.L.T. 6* held as follows:-

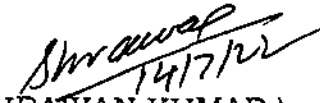
*"25. In the absence of any appeal filed by the department on the finding, relating to alleged clandestine removal of raw materials, the appellant cannot be put in a worse position, in their own appeal and in such circumstances, the principle of "no reformatio in peius" would come into play, which means that a person should not be placed in a worse position, as a result of filing an appeal. It is a latin phrase, expressing the principle of procedure, according to which, using the remedy at law, should not aggravate the situation of the one who exercises it.*



13. Government notes that once penalty has been imposed under Section 112(a) & (b) of the Customs Act, 1962, there is no necessity of imposing penalty under Section 114AA of the Customs Act, 1962. Therefore, the penalty of Rs. 14,81,556/ (Rupees Fourteen lakhs Eighty One thousand Five Hundred Fifty Six) imposed under Section 114AA of the Customs Act, 1962 is set aside.

14. Government upholds the order of absolute confiscation of the impugned gold passed by the AA. The penalty imposed on the applicant under Section 114AA of the Customs Act by OAA and upheld by the AA is set aside. The quantum of penalty imposed on applicant under Section 112(a) and (b) of the Customs Act, 1962 by the OAA and upheld by the AA attains finality in the absence of a revision application not having been preferred by the respondent.

15. The Revision Application is disposed of on the above terms.

  
( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER NO. 207/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 14.07.2022

To,

1. Ms. Dalsi Manharlal Chauhan, D/o. Shri. Manharlal G. Chauhan, 5, Old Jagnath Shreeji Nivas, Opposite Nandvana Boarding, Rajkot - 360 001.
2. Principal Commissioner of Customs, Ahmedabad, 1<sup>st</sup> Floor, Opp. Old High Court, Navranpura, Ahmedabad - 380 009.

Copy to:

1. S.S Arora & Associates, Advocate, B-1/71, Safdarjung Enclave, New Delhi - 110 029.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.