

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. 371/108/B/WZ/2022-RA** / 303

Date of Issue 11.01.2024

---

ORDER NO. 21/2024-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. Mohsin Hussain Momin

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

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-000-APP-684/2021-22 dated 08.09.2021,  
DOI: 14.09.2021 issued through F.No. S/49-1077/2020  
passed by the Commissioner of Customs (Appeals),  
Mumbai - III.

**ORDER**

This revision application has been filed by Shri. Mohsin Hussain Momin (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTM-000-APP-684/2021-22 dated 08.09.2021 DOI: 14.09.2021 issued through F.No. S/49-1077/2020 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2(a). Brief facts of the case are that on 04.11.2018, the Officers of Customs had intercepted the Applicant at Chhatrapati Shivaji Maharaj International Airport (CSMIA), Mumbai where he had arrived from Muscat by Air India Flight No. AI-986/04.11.2018. The Applicant had been intercepted after he had cleared himself through the green channel of Customs. To the query put forth to him regarding anything to declare, he had replied in the negative. The search of the applicant led to the recovery of 03 (three) nos of gold bars of 24KT purity, totally weighing 349 grams, and valued at Rs. 10,27,170/- which he had kept hidden in the underwear worn by him. Each of the gold bars had markings viz, 'ARG UAE 10 TOLAS 999.0', 'ARG UAE 10 TOLAS 999.0' and 'MWG UAE 10 TOLAS 999.0'

2(b). The applicant in his statement admitted that the gold bars had been handed over to him at Muscat by one person named Hamidbhai and that he had carried the gold bars for a monetary consideration. He admitted to the possession, knowledge, carriage, non-declaration and recovery of the gold bars.

2(c). In his later statement, the applicant stated that he was the owner of the gold and had generated money through an announcement in a Masjid at Muscat for his sister's marriage. The applicant also produced a cash memo for the purchase of the gold bars.

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, CSMIA, Mumbai vide Order-In-Original No. ADC/SKR/ADJN/33/2020-21 dated 13.07.2020 issued on 14.07.2020 through F.No. S/14-5-26/2019-20/Adjn [SD/INT/AIU/480/2018-AP'C' ordered for the absolute confiscation of the 03 gold bars, totally weighing 349 grams of gold, valued at Rs. 10,27,170/- under Section 111 (d), (1) and (m) of the Customs Act, 1962. Further, a penalty of Rs. 1,20,000/- was imposed on the applicant under Section 112 (a)(i) of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the appellate authority viz, i.e. Commissioner of Customs (Appeals), Mumbai – III who vide his Order-in-Appeal no. MUM-CUSTM-000-APP-684/2021-22 dated 08.09.2021 DOI: 14.09.2021 through F.No. S/49-1077/2020 upheld in to-to, the OIO passed by the OAA.

5. Aggrieved by this Order, the applicant has filed this revision application on the undermentioned grounds of revision;

5.01. that Gold is not prohibited goods. It is submitted that gold is not a prohibited item and is only a restricted item. Prohibition relates to goods which cannot be imported or exported by any one, such as arms, ammunition, drugs etc. The intention behind the provisions of Section 125 is that import/export of such goods under any circumstances would cause danger to the health, welfare or morals of people as a whole. This would not apply to a case where import/export of goods is permitted subject to certain conditions or to a certain category of persons and which are ordered to be confiscated for the reason that the condition has not been complied with. In such a situation, the release of such goods confiscated would not cause any danger or detriment to public health. Admittedly, import/export of gold is permitted subject to certain conditions, therefore, it would not fall under the prohibited category as envisaged under the said of Section 125 of the Customs Act, 1962. They have relied upon the case of Commissioner of Customs (Preventive), West Bengal Vs India Sales International reported in 2009 (241) ELT 182 (Cal.); that the AA erred in holding that gold is prohibited goods; that the OAA ought not have confiscated the gold absolutely, as

gold is not prohibited goods; that in a catena of decisions, Tribunals, Courts and the Government of India in its orders in revision have directed that confiscated gold have to be allowed to be redeemed on payment of appropriate fines by the persons from whom they were seized and confiscated.

- 5.02. that the Hon'ble Andhra Pradesh High Court in the case of Shaikh Jamal Basha vs Government of India - 1992 (91) ELT 227(AP) has held that option to pay fine in lieu of confiscation has to be given to imported gold as the same is otherwise entitled to be imported on payment of duty.
- 5.03. In the case of Mohamed Ahmed Manu Vs Commissioner of Customs, Chennai - 2006 (205) ELT 383 (Tri-Chennai), the Chennai Bench of the Tribunal has allowed redemption of the confiscated gold on payment of redemption fine.
- 5.04. Further, the Government of India in the case of Mohd Zia Ul Haque Vs Addl Commissioner of Customs, Hyderabad vide revision order no 443/12-Cus dated 8-8-12, 2014 (214) ELT 849 (GOI) allowed the confiscated gold to be redeemed on payment of redemption fine.
- 5.05. that the decision in the case of Om Prakash Bhatia has been over ruled by a Larger Bench of Supreme Court Delhi 2003(155) ELT 423 (S.C.); that therefore, reliance placed on the said decision was not sustainable:
- 5.06. that the OIA is not on merits and not a speaking order. Principles of natural justice had not been followed. On these issues, to buttress their defense, they have relied upon the undermentioned case laws;
- (a) Apex Court's Order in the case of State of Punjab vs. K.R Erry,
  - (b) Liberty Oil Mills vs. Union of India,
  - (c) C. L Tripathi vs State Bank of India
  - (d) Pitchaiah vs. Andhra University
  - (e) A.K Kraipak vs. UOI
  - (f) Chintamoni Pradhan vs. PaikaSamal
  - (g) CESTAT, New Delhi's order in Sahara India TV Network vs. CCE, Noida, relying upon the Apex Court's Order in the case of JT. Commr. IT, Surat vs Saheli Leasing & Industries Ltd [2010-253-ELT-705-SC ; CESTAT, New Delhi order M/s. Vikas Enterprises vs. CCE, Allahabad ; M/s. Sharp Carbon India vs. Commr. Of C.Ex, Kanpur,
  - (h) M/s. International Woollen Mills Ltd. Vs. Standard Wool (UK) Ltd
  - (i) Master Circular on Show Cause Notice, Adjudication and Recovery' issued by the Board under F.NO 96/1/2017-CX.1 dated 19-1-2017,
  - (j) Decision of Cestat, New Delhi in M/s. Sahara India TV Network vs CCE, Noida,
  - (k) Kranti Assocates Pvt. Ltd vs. Masood Ahmed Khan {2011-273-ELT-345-SC},

- (l) M/s. Mahabir Prasad Santosh Kumar vs. State of Up and otrs, reported in AIR-1970-SC-1302,
  - (m) M/s. Travancore Rayons Ltd vs. UOI and otrs AIR-1971-SC-862,
  - (n) Woolcombers of India Ltd. Vs. Woolcombers Workers Union and anr {AIR-1973-SC-2758},
  - (o) Siemens Engg. & Mfg. Co. India Ltd vs. UOI and anr {AIR-1976-SC-1785},
  - (p) Etc.
- 5.07. that submissions made by the applicant were neither discussed nor countered in the impugned O-1-A.
- 5.08. that Circular no. 495/5/92-Cus VI dated 10.05.93 issued by Board cannot prevail over the statue. Circulars are issued only to clarify the statutory provision and it cannot alter or prevail over the statutory provision; that Board's Circular no. 495/5/92-Cus.VI dated 10.05.1993 specified that in r/o gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962, should be given, except in very trivial cases where the adjudicating authority was satisfied that there was no concealment of the gold in question. Reliance is placed on an exhaustive list of case laws;
- 5.09. that the applicant had claimed ownership of the goods and therefore the goods should have been redeemed to him. In this case it was argued that goods may not be redeemed to the person in the light of provisions of section 125 of the Customs Act 1962.; that in Section 125(1) provides for offer of redemption to the owner of the goods or where such owner is not known to the person from whose possession or custody such goods have been seized.
- 5.10. that they have relied upon the case of Dhanak Madhusudan Ramji Versus Commissioner of Customs (Airport), Mumbai [2009 (237) E.L.T. 280 (Tri. - Mumbai)] Department filed a writ petition against the order of CESTAT in Hon'ble High Court of Bombay. There were twin issues of ownership of goods as well as redemption of the goods. Hon'ble Court considered the issues and the order passed by the tribunal. This case was also upheld by the Apex Court [Union of India v. Dhanak M. Ramji - 2010 (252) E.L.T. A102 (S.C.)J
- 5.11. In the case of: MOHD. ZIA UL HAQUE before Government of India T2014/314)849 GOI) redemption of the goods was allowed on payment of fine
- 5.12. that Hon'ble CESTAT in the matter of Yaqub Ibrahim Yusuf Vs Commr. of Customs [2011(263) ELT 685] that prohibition relates to goods which cannot be imported by any one, such as arms, ammunition, addictive substance viz. drugs.

5.13. that the absolute confiscation was not warranted in this case; that the issue of absolute confiscation of goods and option of redemption came up in the case of CC (Prev) vs Uma Shankar Verma where it was held that where the goods are not prohibited, the authorities have no choice but to allow the option of redemption of goods on payment of fine. On the other hand, when the goods are prohibited, allowing redemption on payment of fine is wholly within the discretion of the adjudicating authority.

Under the circumstances, the applicant has prayed to the Revision Authority that the gold under absolute confiscation may be ordered to be released to him on payment of reasonable fine, penalty and applicable duty and further proceedings against him may be dropped

6. The applicant has filed an application for condonation of delay and has attributed the same to the extraordinary situation at that time due to Covid pandemic.

7. Personal hearing in the case was scheduled for 14.09.2023, 21.09.2023, 05.10.2023, 12.10.2023. Shri. Prakash Shingrani, Advocate for the applicant appeared for personal hearing on 05.10.2023 and submitted that the applicant has brought gold for personal use. He further submitted that there was no concealment and applicant is not a habitual offender. He requested for allowing redemption of gold on nominal fine and penalty.

8. On the issue of condonation of delay, Government notes that the revision application has been filed on 28.02.2022. The OIA was signed on 14.09.2021. The applicant has not stated the specific date on which they had received the OIA (concerned sr. no. 5 of their FORM No. CA-8 has been left blank). Government notes that during the appealable period of 3 months, the restrictions due to Covid pandemic had been imposed in the country. Due to the prevalent Covid conditions, Government observes that the Apex Court had granted a moratorium for filing appeals etc from 15.03.2020 to 28.02.2022

[Misc. Appln. No. 21/2022]. The applicant has filed the Revision Application on 28.02.2022. Considering the said moratorium period granted by the Apex Court, it is seen that the applicant had filed the revision application within time.

9. The Government has gone through the facts of the case and notes that the applicant had not declared the gold. When he had been diverted to the Customs counter, an opportunity to declare the goods in his possession had been offered to him. However, he chose not to avail the same and had replied in the negative for possession of dutiable goods. 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 gold had been kept concealed to avoid detection which reveals the mindset of the applicant to evade the payment of duty. It reveals that the act committed by the applicant was conscious and pre-meditated. Had he not been intercepted; the applicant would have gotten away with the gold concealed in his stroller bag. 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. Government observes that the quantity of gold was not substantial. The 03 gold bars had been kept by the applicant in the undergarment worn by him. Applicant has pleaded that the instant gold was for personal purpose. A case that the applicant is a habitual offender has not been made out. 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 mis-demeanour 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 option to release the impugned gold on payment of a redemption fine.

15. Government notes that the penalty of Rs. 1,20,000/- imposed on the applicant under Section 112(a) of the Customs Act, 1962 is about 11.6% of the seizure value. Government finds that the penalty imposed is commensurate with the omissions and commissions committed and is therefore, not inclined to interfere in the same.

16. Accordingly, the Government modifies the impugned order of the appellate authority only to the extent of setting aside the absolute confiscation of the impugned gold, i.e. 03 gold bars, totally weighing 349 grams of gold, valued at Rs. 10,27,170/- and the same is allowed to be redeemed on payment

of a redemption fine of Rs. 2,00,000/- (Rupees Two Lakhs only). The Government also finds that the quantum of penalty of Rs. 1,20,000/- imposed on the applicant under Section 112(a)(i) by the OAA and upheld by the AA is sustained.

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

  
( SHRAWAN KUMAR )

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

**ORDER No. 21/2024-CUS (WZ) /ASRA/MUMBAI DATED 9.01.2024**

To,

1. Shri. Mohsin Hussain Momin, 203, 2<sup>nd</sup> Floor, Ayeshbhai Suleman Eantwala Building, 46, VC Quresh Nagar, Kurla East, Mumbai – 400 070.

2. Pr. Commissioner of Customs, Adjudication Cell, Chhatrapati Shivaji Maharaj International Airport, Sahar, Andheri (East), Mumbai – 400 099.

Copy to:

1. Shri. Prakash K Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra East, Mumbai – 400 051.

2. Sr. P.S. to AS (RA), Mumbai.

3. File Copy.

4. Notice Board.