



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 373/248/B/15-RA | 5774

Date of Issue 06/10/2021

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ORDER NO 242/2021-CUS (SZ)/ASRA/MUMBAI DATED 30.09.2021 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 Jawad Basha Syed

Respondent : Pr. Commissioner of Customs, Chennai-I (Airport).

Subject : Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal C. CUS.I No. 206/2015 dated 27.05.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

ORDER

This revision application has been filed by Shri Jawad Basha Syed (herein after referred to as the Applicant) against the order in appeal Order-in-Appeal C. CUS.I No. 206/2015 dated 27.05.2015 passed by the Commissioner of Customs (Appeals-I), Chennai.

2. Briefly stated the facts of the case are that the Applicant, was intercepted when he arrived at the Anna Internatinal Airport on 07.07.2014, while he was walking through the green channel. The examination of his person and baggage resulted in the recovery of a four gold bars and 16 gold bits totally weighing 1206 gms valued at Rs. 34,28,658/- ( Rupees Thirty four lakhs Twenty eight thousand Six hundred and fifty eight) from his inner pant pockets.

3. The Original Adjudicating Authority vide Order-In-Original No. 50/21.01.2015 ordered absolute confiscation of the gold and imposed a penalty of Rs.3,50,000/- ( Rupees Three lakhs Fifty thousand ) under Section 112 (a) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-In-Appeal C. CUS.I No. 206/2015 dated 27.05.2015 rejected the appeal of the Applicant.

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

5.1 The orders of the lower authorities is against law weight of evidence and probabilities of the case

2) The petitioner submits that he had brought the gold bars and bits for his family members and was purchased out of his hard earned money and savings.

3) The Revision Petitioner respectfully submits that he is an eligible passenger to bring gold at 1 Kg. and he was in possession of sufficient foreign exchange to pay duty for the gold bars.

6. Personal hearings in the case were scheduled online on 04.07.2018 and 11.10.2019. Due to change in the revisionary authority personal hearings were again scheduled on 04.03.2021, 12.03.2021, 08.04.2021, 15.04.2021, 02.07.2021 and 16.07.2021. However, neither the Applicant nor the representative(s) attended the hearings the matter is therefore being decided on merits. Shri. M.A Abdul Hulk, Advocate vide letter dated 14.07.2021 waived right of personal hearing and requested to pass order on the basis of available records.

7. Commissioner (Appeals) has recorded facts of the case under para 4 of his order. He has noted,

*"4. I have gone through the facts of the case, Order, grounds of appeal and other connected papers. I find that the appellant had filled up the value of the dutiable goods brought by him as NIL in his Customs Declaration Card and walked through the green channel. On suspicion and search of his person, the impugned gold weighing 1206 gms was recovered which were ingeniously concealed inside a specially tailored inner pocket of his pant. This establishes a clear mensrea. The Appellant in his voluntary statement immediately after seizure, has admitted that he is not the owner of the goods, and that he carried the gold for a consideration of Rs.10,000/- and had received the gold from his uncle at Kuwait Airport and the same has to be delivered to his uncle's father in Kadappa District. The appellant also accepted that he did not have any foreign Currency to pay the duty and admitted that he has carried the same for monetary consideration. Claiming the ownership at a later stage is only an afterthought. The lower adjudicating authority has rightly confiscated absolutely the impugned goods",*

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. The Applicant has pleaded for setting aside the Order passed by the Lower Adjudicating Authority which has been upheld by the Appellate Authority. 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 and penalty imposed are appropriate. The Government therefore is not inclined to interfere in the Appellate order.

12. The Revision Application is accordingly dismissed.

*Shrawan*  
*30/9/21*  
( SHRAWAN KUMAR )

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

ORDER No. <sup>242</sup>/2021-CUS (SZ) /ASRA/

DATED 30-09-2021

To,

1. Jawad Basha Syed, S/o Shri. Syed Afsar, 10-187, Bellamundy Street, Kadappa District, Andhra Pradesh.
2. The Pr. Commissioner of Customs, Chennai - I (Airport), New Custom House, Meenambakkam, Chennai - 600 027.

Copy To,

1. Shri. M. A. Abdul Huck, Advocate, No. 12 / 35, First Floor, Jones Street, Mannady, Chennai - 600 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File.
4. Spare Copy.