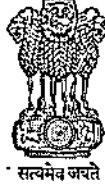


REGISTERED

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. 371/532 & 533/B/2019-RA / 3654:

Date of Issue: 05.09.2022

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ORDER NO. 243-244/2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED  
24.08.2022 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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**(i). F.No. 371/532/B/2019-RA**

Applicant No. 1 : Shri. Pradip Sevantilal Shah

**(ii). F.No. 371/533/B/2019-RA**

Applicant No. 2 : Shri. Rajesh Bhikhabhai Patel

Respondent : Pr. Commissioner of Customs, Ahmedabad.

Subject : Subject : Revision Application filed, under Section  
129DD of the Customs Act, 1962 against the Order-in-  
Appeal Nos. AHD-CUSTM-000-APP-421 & 422-19-20  
dated 01.10.2019 passed by the Commissioner of  
Customs (Appeals), Ahmedabad.

**ORDER**

These two revision applications have been filed by (i). Shri. Pradip Sevantilal Shah and (ii). Shri. Rajesh Bhikhabhai Patel [hereinafter referred to as the Applicants or alternately as Applicant No. 1 (A1) and Applicant No. 2 (A2)] against the Orders-in-Appeal Nos. AHD-CUSTOM-000-APP-421 & 422-19-20 dated 01.10.2019 passed by the Commissioner of Customs (Appeals), Ahmedabad.

2.1. Briefly stated the facts of the case are that the Applicants alongwith two other persons who had all arrived at Ahmedabad airport by Spicejet Flight No. SG 16 from Dubai on 26.03.2018 were intercepted by DRI officials after they had crossed the green channel. To query about possession of any dutiable items, the applicants had replied in the negative. The baggage and personal search of the two other persons accompanying the applicants did not result in the recovery of any dutiable items. However, the search of the baggage of the applicants led to the recovery of gold ornaments / jewellery, details of which are as given below,

**From Applicant No. 1. (all kept in white coloured small pouch found in bag)**

**Table - 1.**

Description of items (all gold)	Qty.	Weight in grams ; all 24 Karats
Gold Kadas	4	466.680
Gold Kadiwali Chains	4	466.760
Gold Chain	1	4.450
<b>TOTAL Weight</b>		<b>937.890</b>
<b>Market value</b>		<b>Rs. 29,86,045/-</b>
<b>Tariff Value</b>		<b>Rs. 26,28,982/-</b>

**From Applicant No. 2. (all kept in black coloured small pouch found in bag)**

**Table - 2.**

Description of items (all gold).	Qty.	Weight in grams; all 92% purity
Small Bangles	2, with white rhodium	22.670
Small chain	1, with white rhodium	4.530
Small nose pins	2, with white stones	0.420
	<b>Total Weight</b>	<b>27.620</b>
	<b>Market value</b>	<b>Rs. 80,927/-</b>
	<b>Tariff Value</b>	<b>Rs. 77,421/-</b>

2.1. In his statement recorded under Section 108 of the Customs Act, 1962, applicant no. 1 had admitted that he had purchased the gold items as a gift for his daughter; that he had purchased the gold items in his name and the names of applicant no. 2 and the other two persons who had accompanied him; that he had done so to escape payment of Customs duties; that the others did not have knowledge of the invoices in their names; that he had purchased gold in the form of TT bars from the jewellery shops and got them converted into 4 raw gold kadas, 4 raw gold chains; that he was in possession of the invoices; that he accepted that the gold items had not been declared on arrival; that he was aware of the rules and regulations; that he admitted his intention to evade payment of Customs

3. The Original Adjudicating Authority viz, Addl. Commissioner of Customs, Ahmedabad vide his Order-In-Original No. 12/ADC-MLM/SVPIA/O&A/2018-19 dated 31.12.2018 issued on 12.02.2019 vide F.No. VIII/10-56/SVPIA/O&A/HQ/2018 held the following;

**(A). In the case of Applicant No. 1.**

Absolute confiscation of the gold, totally weighing 937.890 grams as detailed at Table - 1 above, having tariff value of Rs. 26,28,982/- under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Customs

Act, 1962. A penalty of Rs. 2,62,000/- under the provisions of Section 112(a) and (b) of the Customs Act, 1962 was also imposed on A1.

**(B). In the case of Applicant no. 2.**

Absolute confiscation of the gold, totally weighing 27.620 grams as detailed at Table – 2 above, having tariff value of Rs. 77,421/- under the provisions of Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. A penalty of Rs. 8,000/- under the provisions of Section 112(a) and (b) of the Customs Act, 1962 was also imposed on A2.

4. Aggrieved by the said order, the applicants filed appeals before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Ahmedabad who vide Order-in-Appeal Nos. AHD-CUSTM-000-APP-421 & 422-19-20 dated 01.10.2019 rejected their appeals.

5. Aggrieved with the above order of the AA, the Applicants have filed these revision applications on the following grounds; The grounds of appeal for the two applicants are almost identically worded, hence the main and common features are taken together here below;

5.01. they had bona-fide belief that the gold jewellery upto 1 Kg. was allowed to be brought in the baggage.

5.02. that gold was not a prohibited nor a restricted item under the law.

5.03. that the gold jewellery had not been concealed.

5.04. that no attempt had been made to smuggle the gold jewellery which were kept in a pouch in the handbag.

5.05. that notification no. 50/2017 allows import of gold upto 1 Kg.

5.06. that they had submitted invoices for bona-fide purchases.

5.07. that by not declaring to Customs at the airport about possession of gold was a mistake on their part.

5.08. that as per Section 123 of the Customs Act, 1962, the onus to prove that the goods were smuggled lies with the department. They have relied upon the following judgements to buttress this point;

(a). Gian Chand & otrs. Vs State of Punjab – 1983-(13)-ELT-1365-(SC).

- (b). State of Maharashtra vs. Prithviraj Pokhraj Jain – 2000-(126)-ELT-180-(Bom).
- (c). C.Eswara Reddy vs. CC, Hyderabad-II – 2006-(196)-ELT-410,
- (d). Naved Ahmed Khan vs. CC, Bangalore – 2005-(182)-ELT-494,
- (e). H. Ismail vs..CCE & C-2001-(133)-ELT-191.
- (f). Mahesh B. Bali vs. CCE, Pune – 2012-(286)-ELT-375 (Tr-Mumbai).

5.09. that they contended that the gold was of licit nature and that they had bona-fide invoices showing purchase. On this point, they have relied upon the following case laws,

- (a). Krishnakumar Dhandhanian – 2007-(219)-ELT-736 (Tri. Kol.)
- (b). CC vs. Golak Chandra Kamila – 2006-(205)-ELT-665,
- (c). S K Chains vs. CC, Mumbai – 2001-(127)-ELT-415.

The applicants have prayed to set aside the impugned OIA and pass necessary orders with consequential relief and thereby render justice.

6(a). Personal hearings in the case through the online / virtual video conferencing mode was fixed for 24.05.2022. Shri. Vikash Mehta, Consultant appeared for hearing on 24.05.2022 and reiterated his earlier submissions. He submitted that gold and gold jewellery were purchased for personal purpose, it was not for commercial purpose, applicants are not habitual offenders, there was no concealment. Therefore, goods should be allowed to be redeemed on payment of nominal RF and penalty.

6(b). The Consultant viz, Shri. Vikas Mehta vide his letter dated 22.05.2022 submitted during the hearing, further stated that the undermentioned cases cited by the lower authorities were not applicable to their case;

- (i). Abdul Razak, [2012-275-ELT-300-KER] passed by Hon'ble High Court, Kerala where gold was concealed in emergency light, mixer, grinder, car horns etc.
- (ii). Samynathan Murugesan [2009-247-ELT-21-Mad] passed by Hon'ble High Court, Madras where gold was concealed and recovered after breaking open TV Set.

(iii). Malabar Diamond Gallery Pvt. Ltd [2016-341-ELT-65-MAD] passed by Hon'ble High Court, Madras where the quantity of gold was nearly 5.5 Kgs and found at different premises.

(iv). Khemani Purshottam Mohandas v/s. CC, CSI Airport, Mumbai, [2017-354-ELT-275-TRI-MUM], where it is held that discretion to redeem the goods or absolute confiscation is available to OAA, but OAA had erred in declining to allow redemption.

6(c). He has further submitted that;

- (i) except for the bonafide mistake of not filling up the baggage form declaring the gold items, there was no evidence to show any malafide intention on their part to evade payment of duty. The Adjudicating Authority too had taken note that the applicant no. 1 was earning Rs. 4 lakhs a month from his business.
- (ii) the Adjudicating Authority, in para 23 ibid had acknowledged that he did have a discretion to allow the goods to be redeemed on payment of fine but had declined to exercise it as the goods had not been declared and were prohibited items in terms of Apex Court order in respect of Om Prakash Bhatia (2003-155-ELT-423-SC).
- (iii) that the applicants were not habitual offenders and the goods brought in by them was not for commercial ends but for personal use. They have relied on some case laws on this issue viz, Order dated 25.06.2021 of GOI vs. Shri. Mohammed Gulfam, In Re: Ranmeet Bhatia, 2018-364-ELT-1144-GOI, In Re: Mohd. Zia Ul Haque, 2014-314-ELT-849-GOI. They have prayed to squash and set aside the impugned Orders passed by lower authorities and allow the goods to be redeemed on payment of fine and token penalty considering that they are not habitual offenders.

7. The Government has gone through the facts of the case and submissions of the applicants. The quantity of gold in the possession of applicants was in the form of jewellery. The applicants did not declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. By their actions, it is clear that the applicants had made up their minds to evade payment of Customs duty. The Government finds that the confiscation of the gold jewellery is therefore, justified.

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. In the case of Applicant no. 1 (Shri. Pradip Sevantilal Shah).**

11.1. Government observes that the entire quantity of gold was in the form of jewellery i.e. kadas, kadiwali chains etc. Government notes that the gold jewellery had been kept in a pouch placed in the bag and had not been concealed in an ingenious manner. The invoices for the purchase of the raw gold were found with the applicant no. 1. There are no allegations that the Applicant no 1 is a habitual offender and was involved in similar offences earlier. 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 misdemeanor, reasonableness, fairness and equity are required to be kept in mind when using discretion



under Section 125 of Customs Act, 1962 and while imposing quantum of penalty. Considering the facts of the case, especially that this is a case of non-declaration of the gold jewellery, Government finds that the absolute confiscation of the gold jewellery, leading to the dispossession of the applicant no. 1 is therefore harsh and not justified. Hence, Government is inclined to set aside the order of absolute confiscation passed by the appellate authority.

11.2. Considering the aforesaid facts, Government, therefore, sets aside the order of absolute confiscation passed by the appellate authority and the impugned gold jewellery having market value of Rs. 29,86,045/- (T.V of Rs. 26,28,982/-) is allowed to be redeemed on payment of a redemption fine of Rs. 4,25,000/- ( Rupees Four Lakhs Twenty Five Thousand only).

11.3. The Government finds that the penalty of Rs. 2,62,000/- imposed under Section 112 (a) and (b) by the OAA is appropriate and commensurate with the omission and commission committed by the applicant no. 1 and the appellate authority has upheld the same. The Government does not find it necessary to interfere in the same and upholds the same.

**12. In the case of Applicant no. 2 (Shri. Rajesh Bhikhabhai Patel).**

12.1. Government observes that the quantum of gold jewellery was very small and the purity was low. Hence, the absolute confiscation of the same by the OAA and upheld by the AA is harsh and not justified. Government is thus, inclined to set aside the order of absolute confiscation passed by the appellate authority in respect of applicant no. 2 also and allows the appeal filed by him.

12.2. Government therefore, sets aside the order of absolute confiscation passed by the appellate authority and the impugned gold ornaments valued at Rs. 77,421/- (T.V) is allowed to be redeemed on payment of redemption fine of Rs. 12,000/- ( Rupees Twelve Thousand only).

12.3. The Government finds that the penalty of Rs. 8000/- imposed under Section 112 (a) and (b) by the OAA is appropriate and commensurate with the omission and commission committed by the applicant no. 2 and the appellate authority has upheld the same. The Government does not find it necessary to interfere in the same and upholds the same.

13. For the aforesaid reasons, the two Revision Applications i.e. Nos. (i). F.No. 371/532/B/2019-RA and (ii). F.No 371/533/B/2019-RA filed by the applicants are allowed on the above terms.

*Shrawan*  
24/8/22  
( SHRAWAN KUMAR )

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

243-244  
ORDER NO. /2022-CUS (WZ/SZ)/ASRA/MUMBAI DATED 24.08.2022

To,

1. Shri. Pradip Sevantilal Shah, B-602. Aaryavrat Skies, Behind Kanchandeeep and Bikanerwala, Nehrunagar, Ahmedabad – 380 015.
2. Shri. Rajesh Bhikhabhai Patel, Shree Hari Mukhi House, Behind Royal Crescent Bungalows, Thaltej, Ahmedabad – 385 059.
3. Pr. Commissioner of Customs, Ahmedabad, Custom House, Navrangpura, Ahmedabad – 380 009.

Copy To,

1. Subramanya Law Company, #509, Venus Amadeus, Jodhpur Char Rasta, Satellite Road, Ahmedabad – 380 015.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy,
4. Notice Board.