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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 371/403/B/WZ/2019-RA / 266 Date of Issue : 01.03.23

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ORDER NO. 268 /2023-CUS (WZ)/ASRA/MUMBAI DATED 27.02.2023  
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. Vipul Kumar Nathubhai Mangukiya

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-PAX-366/19-20 dated 31.07.2019 issued on  
13.08.2019 through F.No. S/49-639/2018 passed by the  
Commissioner of Customs (Appeals), Mumbai - III.

**ORDER**

This revision application has been filed by Shri. Vipul Kumar Nathubhai Mangukiya (hereinafter referred to as the Applicant) against the Order-In-Appeal No MUM-CUSTOM-PAX-366/19-20 dated 31.07.2019 issued on 13.08.2019 through F.No. S/49-639/2018 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Brief facts of the case are that the applicant on arrival at CSMI Airport on 07.06.2017 from Dubai by Emirates Airways Flight EK-500 dated 06.06.2017 was intercepted by the Customs Officers while he was proceeding to the exit gate after having crossed / walked through the green channel. The duty free polythene bag 'Mumbai Duty Free' of the applicant was screened and some dark images were seen. Examination of the said polythene bag resulted in the recovery of 27 FM gold bars of 116 grams each, of 24 karats purity, totally weighing 3132 grams, valued at Rs. 83,91,724/- which had been concealed in the liquor box. The applicant revealed that the said gold bars did not belong to him and that he had agreed to carry the same for a monetary consideration.

3. After due process of the law, the Original Adjudicating Authority (OAA), viz Additional Commissioner Of Customs, CSMI Airport, Mumbai, vide Order-In-Original No. ADC/AK/ADJN/283/2018-19 dated 27.09.2018 issued through S/14-5-135/2017-18/Adjn (SD/INT/AIU/146/2017-AP'A' ordered for the absolute confiscation of the 27 gold bars of 116 grams each of 999.0 purity grade, totally weighing 3132 grams and valued at Rs. 83,91,724/- under Section 111(d), 111(l) and 111 (m) of the Customs Act, 1962 and a penalty of Rs. 10,00,000/- was also imposed on the applicant under Section of 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the appellate authority (AA) viz, who vide Order-In-Appeal No. MUM-CUSTOM-PAX-366/19-20 dated 31.07.2019 issued on 13.08.2019 through F.No. S/49-639/2018 who did not find any reason to interfere in the impugned OIO.

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

5.01. that the applicants accept that he had attempted to clear the gold without declaration and without payment of duty but denies the allegation that he acted as a carrier for one Shri Narayan; that the retraction of the statement had been made by him on 19-6-17; that the gold biscuits had been purchased by him; that a routine rebuttal to his retraction had been filed by the respondent; that the statement dated 7-6-17 did not have any evidentiary value against him and cannot be relied upon

5.02. that the OAA had relied upon the said retracted statement. The Hon'ble Supreme Court in the matter of Mohtesham Mohd. Ismail [2007 (220) ELT 3 (S.C.) held that even confession of an accused is not a substantive evidence. The statement is part of the evidence only if it is voluntary and free from any sort of pressure.

5.03. that they have relied upon the following case laws;

(a). In The Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Ltd. - JT 2000 (8) SC 530

(b). Apex court in Vinod Solanki Vs. U.I.O. 2009 (233) ELT 157 (S.C.)

The Hon'ble High Court of Delhi while relying upon the Vinod Solanki (Supra) in the matter of DRI vs. Mahendera Kumar Singhal 2016 (333) ELT (250) (Del.) held that burden is on the department to show that retraction made by the maker of the statement is invalid.

(c). In Commissioner of C.Ex, Ahmedabad-III vs Deora Wires N Machines Pvt Ltd 2016 (332) ELT 393 (Guj.)

(d). The Hon'ble High court of Delhi again in the matter of CCE, Delhi-I Vs. Vishnu & Co Pvt. Ltd., 2016 (332) ELT 793 (Del.) held as under:

(e). The same principle was reiterated in the matter of Rakesh Kumar Garg Vs. CCE, 2016 (331) ELT 321 (Del.)

(f). In Ravindran and Peter John v. The Superintendent of Customs - 2007 TIOL-89-SC-CUS, the Supreme Court cautioned that

a confession cannot form the sole basis of a conviction under the Customs Act.

(g). V. Ananthraman v. Union of India - 2003 (151) E.L.T. 278 (Bom.)

(h). Nicco Corporation Ltd. v. Commissioner of Service Tax - 2014 (307) E.L.T. 228 (Cal.) 2014 (35) S.T.R. 727 (Cal.).

(i). JA. Tajudeen Vs. Union of India 2015 (317) ELT 177 (S.C.)).

(j). M/s Hissar Pipes Pvt. Ltd Vs. CCE, Rohtak, 2015 (317) ELT 136 (Tri-Del.)

(k). High Court Delhi the matter DRI Vs. Moni, 2010 (252) ELT 57 (Del.)

(l). In the case of Vinod Kumar Sahdev Union India - 2009 JCC 2636;

(m). High Court Delhi in the matter Amrik Singh Saluja Vs. U.O.I 2016 ELT In (n). In the case Paunny Vs. Asstt. Collector of CE Cochin, (3) SCC 721

(o). In the case of Madhya Pradesh High Court in the case of Premchand Vs. Central Bureau of Investigation, 1997 (1) EFR 374,

(p). In the case of Francis Stanly @ Stalin v. Intelligence Officer, Narcotic Control Bureau, Thiruvanthapuram [2006 (13) SCALE 386],

(q). In Assistant Collector of Central Excise, Rajamundry v. Duncan Agro Industries Ltd. - JT 2000 (8) SC 530,

(r). The Hon'ble High Court of Delhi in the matter of DRI VS. Mahendera Kumar Singhal 2016 (333) ELT (250) (Del.)

(s). In COMMR. OF C. EX., AHMEDABAD-III VS. DEORA WIRES N. MACHINES PVT. LTD. 2016 (332) ELT 393 (Guj.).

(t). The Hon'ble High court of Delhi again in the matter of CCE, Delhi I Vs. Vishnu & Co Pvt. Ltd., 2016 (332) ELT 793 (Del.)

(u). In the matter of Rakesh Kumar Garg Vs. CCE, 2016 (331) ELT 321 (Del.) 56.

(v). In Ravindran and Peter John v. The Superintendent of Customs - 2007-TIOL-89-SC-CUS,

(w). Etc.

5.04. that the further statement of the applicant dated 10-11-17 incriminating himself in the offence of smuggling cannot be considered as corroboration in material; that the applicant had been arrested on 7-6-17 and was later released on bail; that he had filed the retraction of the statement dated 7-6-17 on 19-6-17; that out of fear and coercion, he had admitted that he acted as a carrier; that respondent had rebutted his retraction discounting it as an afterthought; that his statement was recorded on 10-11-17.

5.05. that the applicant was not a carrier

5.06. that gold is not a prohibited item , but only 'restricted goods'. Import of gold is no longer prohibited and therefore, it is the duty on the part of the adjudicating authority, if he is of the view that it is liable for confiscation, to permit its redemption on appropriate fine. ; that to justify absolute confiscation of imported gold on the ground that gold is a 'prohibited' item, many Adjudicating Authorities rely upon the decisions in the following cases.

1. Madras High Court in, Commissioner Of Customs (Air) vs Samynathan Murugesan on 27 April, 2009., and
2. Madras High Court Aiyakannu vs Joint Commissioner Of Customs on 2nd March, 2012
3. Om Prakash Bhatia vs Commissioner of Customs, Delhi 2003(155) ELT 423 (S.C).

5.07. that the intention behind the provisions of Section 125 is clear that import 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 of gold is permitted in case of certain category of persons, subject to certain conditions, therefore, it would not fall under the prohibited category as envisaged under the said provisions.

(a). They have relied upon the decision of the Hon'ble High Court of Calcutta in the case of Commissioner of Customs (Preventive), West Bengal Vs. India Sales International reported in 2009 (241) ELT 182 (Cal.).

(b). The Hon'ble Supreme Court of India in the case of Om Prakash. Bhatia vs Commissioner of Customs, Delhi 2003(155) ELT 423 (S.C) held in reference to Section 2(33), 11 and 113(d) of Customs Act, 1962 that prohibition of importation or exportation can be subject to certain prescribed condition to be fulfilled before or after clearance of goods and if conditions are not fulfilled it may render the goods as prohibited goods. The said case was decided in the context of over invoicing of exported readymade garments.

(c). The Hon'ble High Court of Bombay in the case of Union of India Vs Dhanak M Ramji (2003(248) ELT 128 (Bom)) and the Apex Court in the case of Sapna Sanjiv Kohli Vs Commissioner of Customs, Mumbai [2010(253) ELT A52 (SC)] has also held that gold is not

prohibited goods and accordingly the gold jewellery was allowed to be redeemed on payment of fine and duties.

(d). that the Notification 12/2012-Cus also, which was relevant to the present case, did not prohibit the importation of goods in any manner and it only specified the eligibility criteria only for the purpose of exemption from Custom duty in respect of the imported goods which is not the issue in the instant case.

5.08. that Section 125 of Customs Act, 1962 provides that in case of prohibited goods the adjudicating authority may give an option of redemption and in this way he has discretionary power but for other than prohibited goods the adjudicating authority has to give option to pay fine in lieu of confiscation and in this way the adjudicating authority shall allow redemption to the owner or to the person from whose possession such goods have been seized:

5.09. that in terms of section 2(33) of Customs Act, 1962 "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

5.10. In terms of clause (h) of Rule 3 of Foreign Trade (Exemption) from Application of Rules in Certain Cases) Order, 1993 import of gold is allowed in any form as part of baggage by passengers of Indian origin if the passenger satisfies the condition of six months stay abroad, quantity does not exceed kilograms and duty is paid in convertible foreign currency. Accordingly, the complexion of prohibition on import of gold has undergone a sea change.

They have relied on the following case laws;

(a) In Yakub Ibrahim Yusuf vs CC, Mumbai 2011 (263) E.L.T. 685 (Tri. Mumbai),

(b) In Neyveli Lignite Cor Ltd vs UOI 2009 (242) E.L.T. 487 (Mad.),

(c) In Hargovind Das Joshi Vs Collector of customs 1992 (61) ELT 172(SC)

(d) In Universal Traders Commissioner - 2009 (240) E.L.T. A78 (SC)

(e) In Gauri Enterprises CC, Pune 2002 (145) ELT (705) (Tri Bangalore)

(f) In CC (Airport), Mumbai Vs Alfred Menezes 2009 (242) ELT 334 (Bom.),

(g) In Shaik Jamal Basha Vs Government of India 1997 (91) ELT 277(AP) the Hon'ble High Court held that Gold is allowed for import

on payment of duty and therefore Gold in the form other than ornaments imported unauthorisedly can be redeemed.

- (h) In VP Hameed Vs Collector of Customs Mumbai 1994(73) ELT 425 (Tri)
- (i) In T. Elavarasan Vs Commissioner of Customs (Airport), Chennai 2011 (266) ELT 167 (Mad),
- (j) In Kadar Mydin v/s Commissioner of Customs (Preventive), West Bengal 2011 (136) ELT
- (k) In Sapna Sanjeeva Kolhi v/s Commissioner of Customs, Airport, Mumbai 2010(253)ELT A52(SC)
- (l) In Vatakkal Moosa v/s collector of Customs, Cochin 1994 (72) ELT (G.O.L.); Halithu Ibrahim vs CC [2002 TIOL 195-CESTAT-MAD.,
- (m) Krishna Kumari vs CC, Chennai 2008 (229) ELT 222 (Tri-Chennai);
- (n). S.Rajagopal vs CC, Trichy 2007 (219) ELT 435 (Tri-Chennai);
- (o). M. Arumugam Vs CC, Trichirapalli 2007 (220) ELT 311 (Tri-Chennai)
- (p). In the case of Union of India vs Dhanak M. Ramji 2009 (248) E.L.T. 127 (Bom.),
- (q). In the case of Peringatil Hamza Vs CC (Airport), Mumbai 2014 (309) ELT 259 (Tri Mumbai)
- (r). In the case of R. Mohandas Vs CC, Cochin 2016 (336) ELT 399 (Ker),
- (s). In the case of A. Rajkumari vs CC (Chennai) 2015 (321) E.L.T. 540 (Tri. - Chennai) wherein redemption of 70 gold bars concealed in an Air conditioner was allowed by the adjudicating authority against fine of almost 50% of value, the tribunal reduced the fine to almost 14% treating the same as excessive. The Appeal filed by the department was dismissed by Hon' ble Apex Court vide 2015 (321) ELT A 207 (SC) as 'time barred'.
- (t). In Shaik Mastani Bi vs Pr. CC, Chennai 2017 (345) E.L.T. 201 (Mad.), the Hon'ble High court of Madras affirmed redemption of gold.
- (u). In the case of Bhargav B. Patel vs CC, Mumbai (Appeal No. C/381/10)

5.11. That the financial capacity cannot be a factor to prove the allegation as carrier:

They have relied upon the Apex Court order in the case of Sodhi Transport vs State of UP, 1986

Reliance is placed on the decisions in the following cases.

- (a) In CEGAT - Bangalore -Naveed Ahmed Khan vs Commissioner of Customs on 7 December, 2004-2005 (182) ELT 494 Tri-Bang
  - (b) In CEGAT - Bangalore - T.V. Mohammed vs Commissioner Of Customs
  - (c) In the case of Topandas Vs. State of Bombay A.I.R. 1956 SC 33,
  - (d) In the case of Vinayak Vs. State of Maharashtra (1984) 4 SCC
  - (e) In Gulab Singh v. The Emperor (A.I.R. 1916 All. 141)
  - (f) The Apex Court in Girija Shankar Misra v, State of U. P. AIR 1993 SC 2618,
  - (g) In the case of Orissa High Court, Ghanashyam Jena vs State Of Orissa on 22 August, 2003 Equivalent citations: 2003 CriLJ 4794
- 5.12. That the Penalty imposed on the applicant was disproportionate to the value of gold imported by him and was not sustainable:
- 5.13. Binding precedents were not followed by the Adjudicating Authority while adjudicating the case:
- (a). In 'E.I. Dupont India Private Limited V. Union of India' - 2014 (5) TMI 128 - GUJARAT HIGH COURT
  - (b). In 'Clari's Life Sciences Limited V. Union of India' 2014 (1) TMI 1467 GUJARAT HIGH
- 5.14. that the Order of the Commissioner of Customs (Appeal) was not order on merits and not a speaking order; that natural justice had not been followed.
- 5.14. that the applicant claims ownership of the goods and redemption of the goods on payment of duty and fine:
- (a). Halithu Ibrahim Vs Commissioner of Customs [2002 -TIOL 195 CESTAT-MAD] TIOL-194].
  - (b). Felix DorexFernnees vs Commissioner of Customs [2002 CESTAT MUM]
  - (c). Yakub Ibrahim Yusuf Vs CC, Mumbai 2011 (263) ELT 685 (Tri-Mumbai)
  - (d). RejiCheriyam Vs CC, Kochi
  - (e). P.Sinnasamy Vs CC, Chennai 2007 (220) ELT 308 (Tri-Chennai)
  - (f). Krishnakumari Vs CC, Chennai 2008 (229) ELT 222 (Tri-Chennai)
  - (g). S.Rajagopal Vs CC, Trichy 2007 (219) ELT 435 (Tri-Chennai)
  - (h). M Arumugam Vs CC, Tiruchirapalli, 2007 (220) ELT 311 (Tri-Chennai)
  - (i). Shaik Jamal Basha V. Government of India (1997(91) E.L.T. 277 (A.P.)



- (j). Commissioner of Customs (Preventive) Vs. Uma Shankar Verma (2000 (120) E.L.T. 322 Cal.)
- (k). T.Elavarasan vs The Commissioner of Customs
- (l). VP Hameed Vs Collector of Customs, Bombay (1994 (73) ELT 425)
- (m). Kader Mydin vs Commissioner of Customs (Preventive), West Bengal (2001 (136) ELT 758):-
- (n). Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai (2008(230) ELT 305)
- (o). Vattakkal Moosa Vs Collector of Customs, Cochin (1994 (72) ELT 473 (GOI)
- (p).Order no 426/04 issued vide file no 380/57/8/2004-RA-Cus dated 21 9-2004
- (q). In the case of K. Kuttiyandi v. Commissioner of Customs, Chennai (Appeal No. C/29/2000), CESTAT Bench
- (r). In the case of Dhanak Madhusudan Ramji Versus Commissioner of Customs (Airport), Mumbai [2009 (237) E.L.T. 280 (Tri. Mumbai)]
- (s). In the case of: MOHD..ZIA UL HAQUE before Government of India T2014/314)849 GO1)

Under the circumstances, the applicant has prayed to the revision authority to grant redemption of the gold bars on reasonable fine and penalty and to drop further proceedings.

6. Personal hearings in the case through the online video conferencing mode was scheduled for 10.08.2022 and 24.08.2022. Shri. Prakash Shingrani, Advocate appeared for personal hearing on 10.08.2022. He submitted that applicant is not a habitual offender, there was no ingenious concealment and gold is not a dangerous / hazardous substance. He requested for release of goods on nominal fine and penalty.

7. The Government has gone through the facts of the case and notes that the applicant was carrying a very large quantity of gold which had been innovatively concealed in the liquor box kept inside polythene bag of duty free shop and also had not declared the same to the Customs. Even after interception, when the applicant was asked about the possession of any gold or dutiable items, he had

stoically denied that he was carrying any gold. The applicant had not declared the huge quantity of gold in his possession to the Customs. The applicant had not made a true declaration to the Customs and the applicant had clearly 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 cleverly and innovatively concealed the gold inside liquor box which reveals his mindset to smuggle the goods and evade the duty. This method used by the applicant of keeping the gold concealed in a liquor box and placing it in a polythene bag bearing logo as Mumbai duty free can be termed was ingenious , as it does not create a doubt at the security as duty free shopping is allowed at the airport and incoming passengers make purchases from the duty free shops located within the airport. It also reveals that the act committed by the applicant was conscious and pre-meditated. The applicant did not intend to declare the gold in his possession to Customs. Had he not been intercepted, the applicant would have gotten away with such a large quantity of gold. The Government finds that the confiscation of the gold 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 'applicant' 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. Government observes that the quantum of gold was large, of high purity, in primary form, of commercial quantity and it was cleverly, consciously, innovatively and premeditatedly concealed. Applicant was acting for monetary benefit and gold was being smuggled for commercial purpose. It revealed his clear intention to evade duty and smuggle the gold into India. The circumstances of the case especially that it is of huge commercial quantity and in primary form and was cleverly concealed, clearly brings out that the applicant had no intention of declaring the gold to the Customs at the airport. All these facts have been properly considered by the Original Adjudicating Authority while absolutely confiscating the 27 bars, totally weighing 3132 grams, valued at Rs. 83,91,724/- (T.V).

12. Government finds that the retraction of statement is clearly an afterthought and has been dealt with by the OAA in para 20.1 of the OIO. Government finds that the same does not need further reiteration. Also, the exhaustive case laws cited by the applicant were submitted by him before the OAA and AA who had considered the same and rejected the plea. Government finds the same as repetition. These judgements have either been given in different set of facts or the ratios of the same have been selectively and obliquely

applied to. As a result, correct position of law has not been appreciated by the applicant in the given set of facts of instant application. These judgements are not of much help to applicants.

13. The option to allow redemption of seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment being clever and innovative with conscious and firm intent to hoodwink the Customs and evade payment of duty, quantity being large and commercial, this being a clear attempt to smuggle gold bars in primary form, is a fit case for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of the offence, the adjudicating authority had rightly ordered the absolute confiscation of the gold. But for the intuition and the diligence of the Customs Officer, the large quantity of gold would have passed undetected. The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring gold. Such blatant acts of mis-using the liberalized facilitation process should be meted out with exemplary punishment and the deterrent side of law for which such provisions are made in law needs to be invoked. The absolute confiscation of the gold would act as a deterrent against such attempts and would deter persons who indulge in such acts with impunity. Therefore, Government finds that the OIO passed by the OAA is proper and legal and the same has been rightly upheld by the AA. In this case, judicious application of discretion in light of directions of Hon'ble Supreme Court as contained in decision at para 10, above is evident.

14. The Government finds that the penalty of Rs. 10 lakhs imposed under Section 112 (a) and (b) of the Customs Act, 1962 by the original adjudicating authority is commensurate with the omissions and commissions committed by the applicant and does not find it necessary to interfere in the same.

15. In view of the above, the Government finds that the OIA passed by the AA who has upheld the OIO passed by the OAA is legal and proper and Government does not find it necessary to interfere in the same. The Revision Application filed by the applicant, fails.

16. Revision Application filed by the applicant is rejected / dismissed.

  
( SHRAWAN KUMAR )

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

**ORDER No. /2023-CUS (WZ) /ASRA/MUMBAI DATED .02.2023**

To,

1. Shri. Vipul Kumar Nathubhai Mangukiya, 21, Jaidarshan Society, Near Savjibhaikorat Bridge, Nana Varachha, Surat City – 395 006.
2. Pr. Commissioner of Customs, Level – II, Terminal – 2, Chhatrapati Shivaji Maharaj Airport, Sahar, Andheri West, Mumbai – 400 099.

Copy To,

1. Shri. Vipul Kumar Nathubhai Mangukiya, C/o. Shri. Prakash K. Shingrani, Advocate, 12/334, Vivek, MIG Colony, Bandra (E), Mumbai – 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.