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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

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**F.No. 371/236/B/2019-RA** | 1334 **Date of Issue** 03-03-2023  
02.2023

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ORDER NO. 278/2023-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** : Mr. Bhupathy Kannan

**Respondent** : Pr. Commissioner of Customs, CSI Airport, Mumbai.

**Subject** : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-1058/2018-19 dated  
29.01.2019 [Date of issue: 05.02.2019] [S/49-  
59/2017] passed by the Commissioner of Customs  
(Appeals), Mumbai Zone – III.

**ORDER**

These revision applications have been filed by Mr Bhupathy Kannan (herein referred to as 'Applicant') against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1058/2018-19 dated 29.01.2019 [Date of issue: 05.02.2019] [S/49-59/2017] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2. Brief facts of the case are that on 15.01.2015, the Applicant who had arrived at Mumbai from Bangkok by Bangkok Airways Flight No PG-733, was intercepted by the customs officers at the Chattrapati Shivaji Maharaj (CSI) Airport, near the exit gate of the arrival hall after he had cleared himself through the Green channel of Customs. The Applicant was asked whether he was carrying dutiable goods or gold in his baggage or his person to which he replied in the negative. Detailed examination of baggage and personal search of the Applicant resulted in the recovery of 24 yellow metal chains purported to be gold from the various pockets of the cargo pants worn by the Applicant. The 24 yellow metallic chains purported to be gold totally weighing 9310 grams and valued at Rs. 2,32,83,937/- were seized under the reasonable belief that the same were attempted to be smuggled into India in contravention of the provisions of the Customs Act, 1962. The Applicant in his statement admitted the possession, concealment, non-declaration and recovery of the said 24 gold chains and that the gold did not belong to him and he carried the gold for monetary considerations and that this was the second time that he had carried the gold earlier on 04.01.2015 he had carried 10 crude gold chains of 200 grams each. He further stated that he was told by the owner of the gold not to declare the same and that he was aware that non-declaration of gold was an offence punishable under the Customs Act, 1962. The

Applicant retracted his statement on 15.01.2015 but reiterated his earlier statements in his statements recorded subsequently.

3. The Applicant in the written submissions and personal hearings claimed ownership of the gold and that the gold was taken on credit from a shop in Bangkok and that there was no ingenious concealment. After due process of investigations and the law, the original adjudicating authority viz, Additional Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/RR/ADJN/329/2015-16 dated 11.02.2016 [Date of issue: 15.02.2016] [S/14-5-393/2014-15 Adjn (SD/INT/AIU/319/2014 AP 'A')], ordered for the absolute confiscation of the impugned 24 gold chains totally weighing 9310 grams and valued at Rs. 2,32,83,937/- under Section 111 (d), (1) and (m) of Customs Act, 1962 and a penalty of Rs. 25,00,000/- under section 112(a) & (b) of the Customs Act, 1962 was imposed on the Applicant.

4. Being aggrieved by the order, the Applicant filed an appeal before the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai Zone-III, who vide Order-In-Appeal MUM-CUSTOM-PAX-APP-1058/2018-19 dated 29.01.2019 [Date of issue: 05.02.2019] [S/49-59/2017], upheld the Order-in-Original and rejected the appeal.

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

5.01. Defective Mahazar and inconsistency vis-à-vis the statement and show cause notice

(a) That from the excerpts of the Mahazar, statement of the Applicant and the show cause notice, the Panchanama which is a contemporary document for recovery of gold becomes highly suspect document and

therefore recovery of gold is not proved and the statement of the applicant becomes unworthy of evidence. Reliance placed on the judgement in the case of Munnalal Khandelwal vs. Commissioner of Customs [1999(111) E.L.T. 603 (Tri)]

5.02. Receipt of notice and corrigendum beyond six months and seizure effected in the baggage hall cannot be treated as smuggled goods:

(a) The date of seizure was 15.01.2015 and the show cause notice is dated 13.07.2015 and is issued to the Applicant on 14.07.2015 and the receipt of the same by the Applicant at Chennai was beyond 15.07.2015 which is beyond 6 months and was sent by Speed Post and not by registered post as required under Section 153 of the Customs Act, 1962.

(b) That the SCN has been received on 21.07.2016 and the corrigendum on 27.07.2016 and thus there was a violation of the provisions of Section 110(2) of the Customs Act and thus the gold will have to be returned to the Applicant. The Applicant has relied upon the following case laws:

- (i) Assistant Collector of Customs vs. Malhotra [AIR 1972 S.C. 689]
- (ii) Uma Rajeshwar Rau Patra vs. UOI [1992(109) E.L.T. 123( Cal)]
- (iii) Singh Enterprises vs. CCE, Jamshedpur [2008(221)E.L.T. 163(SC)]
- (iv) Purushotam Jajodia vs DRI, New Delhi [ 2014(307) E.L.T. 837(Del) HC]

(c) That the plea of the show cause notice being received by the Applicant beyond the period of 6 months is being raised for the first time before the RA and it is settled in law that when a fresh point is an additional point is raised at any appeal stage it becomes admissible if the additional ground pertains to a matter of law.

The Applicant has also relied on the judgement in the case of Prakash Chandra Shantilal vs. CC, Ahmedabad[2013(290) E.L.T. 125 (Tri-Ahd)]

5.03. Submissions made to the Commissioner(Appeals ) in the Appeals Memorandum have been brushed aside and hence the Order-in-Appeal is not a speaking order

(a) That the pleas of the Applicant for release of the seized gold on payment of appropriate duty, fine and penalty was not exercised by the lower authority, request for cross examination was denied, re-export was not allowed, findings of the lower authority was based on conjectures, surmises, mere assumptions and presumptions as no attempt has been made to sift, analyse and the weigh the material qua and contentions raised;

(b) That the request for re-export was denied on the grounds that the Applicant was a repeat offender though he was released from COFEPOSA detention as no sufficient cause for detention was found

(c) That the case laws relied upon by the Applicant and other pleas were brushed aside and ignored as a result of which the impugned order is not a speaking order and deserves to be set aside.

5.04. Gold is not a prohibited goods as held in several orders, decisions and judgements

That it is a settled law that gold is not prohibited under the Customs Act, 1962 and can be imported on payment of duty and therefore no penalty can be imposed as held in a catena of judgements as under

- (i) S.Rajgopal vs. CC,Trichy [2007(219) E.L.T. 435 (Tri-Chennai)]
- (ii) Shaikh Jamal Basha vs. UOI [1997(91) E.L.T 277(AP)]
- (iii) Abdul Azeez vs CC (Air) [2009(241) E.L.T. 99(Tri)]
- (iv) Badrul Muner Ambidattil vs. ADC, Pune [Order No. 69/14 dated 17.05.2014]
- (v) Madras High Court decision in the case of Samuanathan Murugesan [2009(247) E.L.T. 21( Mad)] and Neyveli Lignite Corp Ltd [ 2009(242) E.L.T. 487( Mad)]

- (vi) IN RE: Mohd. Zia Ul Haque [2014(314) E.L.T. 849 (GOI)]
- (vii) IN RE: Jatinder Singh [2018(361) E.L.T. 958(GOI)]
- (viii) IN RE: Ranmeet Bhatia [2018(364) E.L.T. 1144(GOI)]

Under the circumstances the Applicant has prayed for permission to RE-exports or redeem the seized goods on payment of duty at the appropriate rates for gold jewellery together with fine and penalty and a lenient view be taken as regards imposition of fine and penalty.

6. The Applicant has also filed an application for condonation of delay in filing of the revisionary application citing that his then advocate did not hand over the copy of the Order to him and only when he visited the office of the AA and requesting for a copy of the Order, was a copy given to him which had resulted in a delay of 62 days in filing the Revision Application and requested that the delay be condoned.

7. The Advocate for the Applicant made further submissions vide letter dated 13.09.2022 wherein he reiterated the pleas made in the Revision Application and in addition relied upon the following case laws:

- (i) Jeevraj vs. Collector of Customs decided by the Hon'ble Karnataka High Court vide order dated 17.12.1992
- (ii) IN RE: Ajay Gupta [2020(372) E.L.T. 735 (GOI)]

8. Personal hearing in the case was scheduled for 13.09.2022 or 27.09.2022 or 11.11.2022. Shri V.R Balasubramani, Advocate appeared online for the hearing on 11.11.2022, on behalf of the Applicant. He submitted that the SCN was not served in six months to the Applicant and requested to allow re-export of the goods. He further submitted that gold was in the form of crude jewellery which was not restricted/prohibited. He

further stated that the statement was retracted by the Applicant and requested to allow redemption of goods on reasonable redemption fine and penalty.

9. The Advocate for the Applicant made further written submission vide letter dated 15.11.2022 (received on 21.11.2022) wherein it was stated that the show cause notice was received by the applicant after a period of 06 months from the date of seizure, no opportunity was given to the Applicant to declare the gold, that in hundreds of cases, the Adjudicating Authorities, the Appellate Authorities, Tribunals, High Courts and Apex Court have consistently ordered release of gold and gold ornaments on redemption imposing redemption fine and penalty, that the request for re-export was brushed aside, gold jewellery was not prohibited goods aside. The following case laws were quoted in reiteration of the pleas made earlier

- (i) Deepak Natwarlal Sone vs. UOI [2019(368) E.L.T.27 9Guj]
- (ii) Iurkatsh Corporate Services vs.CCE Service Tax [2014(934) S.T.R. 35(Guj)]
- (iii) Mohammed Haroo vs. ADG, DRI, Chennai [2021(37) E.L.T. 754(Mad)]
- (iv) Commissioner of Customs vs. Shri Ashwini Kumar alias Amanulla [2021(376) E.L.T. 321(Tri -Del)]

10. Applicant has filed for condonation of delay. Government notes that the revision application has been filed on 15.07.2019. The date of receipt of the appellate order by the Applicant is on 08.02.2019. Government notes that the same is within the extended period of 6 months (i.e. 3 months + 3 months) as prescribed in Section 129DD (2) of the Customs Act, 1962. Applicant has given reasons for cause of delay which appear reasonable. Accordingly, Government condones the delay.

11. The Applicant has stated that the show cause notice has been received by him after 6 months from the date of seizure. SCN has been issued on 13.07.2015 for the goods seized on 15.01.2015 and has been issued to the Applicant on 14.07.2015, within six months. Further, Government observes from the records of the case that since the date of SCN, the Applicant has never raised the issue till this stage. Government notes that even in the reply to the show cause notice, the Applicant has not found it worthwhile to mention the same. Further, even in the impugned Order-in-Original and the Order-in-Appeal, there has been no discussion or whisper of mention of the Applicant having been aggrieved on this count and has been contesting on gold not being prohibited and extolling his virtues to prove his innocence. This grievance being brought to the fore at this belated juncture is nothing but a last ditch attempt to find a way out from the inescapable conclusion of the case on hand. Government notes that limitation not being even referred to in the impugned Order-in-Appeal, the Applicants stand and plea cannot be entertained at this belated stage and Government proceeds to take up the application on merits.

12. The Government has gone through the facts of the case and notes that the Applicant was carrying a very large quantity of gold in crude form his person which had been concealed in the pockets of the cargo pants worn by him and 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 in the Customs declaration form. The Applicant had not filed a true declaration to the Customs and 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 huge quantity of gold in the pockets of the cargo pants worn by him which reveals his mindset to smuggle the goods and evade the duty. The quantum of gold and the manner of attempting to smuggle indicates that the same was for commercial use. The Applicant's admission that the gold was attempted to be smuggled for monetary considerations and that he had also carried 10 crude gold chains of 200 grams each on an earlier occasion brings out that the Applicant was part of a syndicate as a carrier. This method used by the Applicant can be termed ingenious, as he had successfully passed through the security of the overseas departing airport and also the security at the arrival 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 and the Applicant had rendered himself liable for penalty for his omissions and commissions.

13. Government observes that 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.), 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.

14. 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, is liable for penalty.

15. 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.”*

16. Government observes that the quantum of gold was very large, of high purity of commercial quantity and it was cleverly, consciously and premeditatedly concealed. The Applicant, a habitual offender, was acting for monetary benefit and gold was being smuggled for monetary consideration. 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 the form of crude jewellery 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 24 gold chains weighing 9310 grams and by the Appellate Authority while dealing with the appeal filed by the Applicant.

17. The Appellate Authority at para 7 (typo error shows it as 6) and 8 of the impugned Order-in-Appeal has stated as under:

*“6. In present case after considering all the facts and submissions of the case, I find that there is deliberate act of violation by the passenger by not making mandatory declaration in terms of Section 11 of Customs Act, 1962 and also contravened Para 2.20 of Foreign Trade Policy read with Baggage Rule 199 which has duly been analyzed and included in the findings of adjudicating authority. I find that appellant had failed to produce any material evidence in favor of his claim of ownership like purchase invoice, bank statement etc. No explanation has been offered as to how the*

*finances were arranged to buy the gold. A passenger found in possession of gold in bullion form worth of Rs. 2,32,83,937/- then his/her purpose & intention cannot be other than avoidance of payment of duty and legal obligations laid down for import of gold in India under Customs Act, 1962 and any other law for the time being in force. To make the things worse, the passenger confessed that he had brought gold in similar fashion on previous occasion also and he was getting huge monetary benefits of Rs. 4,50,000/-.*

*8. Regarding plea of the appellant that the gold may be allowed to re-export against redemption fine, I find that in the case at hand large quantity of 24 k gold in crude form having being brought as a carrier for monetary consideration by the passenger who is a frequent traveller and admittedly repeat offender and therefore allowing redemption in such cases will be detrimental to national economy and will encourage large scale smuggling of gold. In such cases redemption cannot be claimed as a right and the adjudicating authority has rightly confiscated the gold absolutely.”*

18. The main issue in the case is the manner in which the impugned gold was being brought into the Country. Though the option to allow redemption of the seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and the discretion to release the gold is based on various factors such as methodology of smuggling, manner of concealment, quantity, attempt of smuggling as part of a syndicate etc and after examining the merits. In the present case, the quantum of the gold chains and manner of concealment being clever with a clear attempt to smuggle the gold chains totally weighing 9310 grams, it is a fit case for absolute confiscation which would act as a deterrent to such offenders. Thus, taking into account the facts on record and the serious and grave and novel and bold modus

operandi, the Original Adjudicating Authority had rightly ordered and the Appellate Authority has rightly echoed the absolute confiscation of the impugned gold in chains. But for the intuition and the diligence of the Customs Officers, the gold would have passed undetected. The redemption of the gold will encourage such concealment as, if the gold is not detected by the Custom authorities, the passenger gets away with smuggling and if not, he has the option of redeeming the gold. Such acts of misusing 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. Government thus concurs with the findings of the lower authorities and holds that the absolute confiscation of the gold is in order.

19. The Applicant has relied on several judgements to buttress his case and further his designs. These judgements have either been given in different set of facts or the ratios of the same have been selectively and obliquely applied to. The judgements mentioned in the previous paras here are appropriate to both the subjects of treating gold in the baggage and once goods are held to be prohibited, the circumstances and factors are to be considered for allowing redemption of the same.

20. Government notes that the penalty of Rs. 25,00,000/- imposed on the Applicant under Section 112 (a) and (b) of the Customs Act, 1962 by the Original Adjudicating Authority is commensurate with the omissions and commissions committed and Government is not inclined to interfere with the same.

21. In view of the above, the Government upholds the Order-in-Appeal No. MUM-CUSTM-PAX-APP-1058/2018-19 dated 29.01.2019 [Date of issue: 05.02.2019] [S/49-59/2017] passed by Appellate Authority i.e the

Commissioner of Customs (Appeals), Mumbai Zone-III and is not inclined to interfere with the same.

22. The Revision Application is dismissed.

*Shrawan*  
*28/2/23*  
( SHRAWAN KUMAR )

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

ORDER No. *278* /2023-CUS (WZ) /ASRA/ DATED *28* /02.2023

To,

1. Mr. Bhupathy Kannan, 16, Ranjith Road, Kotturpuram, Chennai 600 085.  
**Address No 2:** Mr. Bhupathy Kannan, c/o Shri V.R.Balasubramani, No. 244, 1<sup>st</sup> Cross, BSK 3<sup>rd</sup> stage, 3<sup>rd</sup> Phase, 2<sup>nd</sup> Block, Bengaluru 560 085.
2. The Pr. Commissioner of Customs, Terminal-2, Level-II, Chhatrapati Shivaji International Airport, Mumbai 400 099.
3. The Commissioner of Customs (Appeals), Mumbai Zone – III, Awas Corporate Point, 5<sup>th</sup> Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai – 400 059.

Copy to:

1. Shri V.R.Balasubramani, No. 244, 1<sup>st</sup> Cross, BSK 3<sup>rd</sup> stage, 3<sup>rd</sup> Phase, 2<sup>nd</sup> Block, Bengaluru 560 085.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.