

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. 371/50/B/2018-RA/4991 : Date of Issue : 23.10.22

---

ORDER NO. 290/2022-CUS (WZ)/ASRA/MUMBAI DATED 18.10.2022  
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.

---

Applicant : Smt. Manmohan Kaur

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

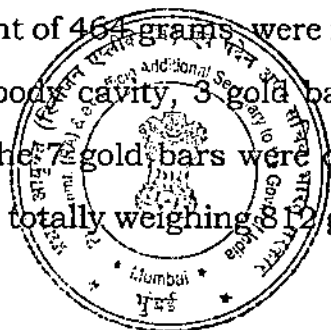
Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-948/17-18 dated 16.01.2018  
issued on 18.01.2018 through F.No. S/49-842/2015/AP),  
passed by the Commissioner of Customs (Appeals),  
Mumbai – III.



ORDER

This revision application has been filed by Smt. Manmohan Kaur (herein referred to as Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-948/17-18 dated 16.01.2018 issued on 18.01.2018 through F.No. S/49-842/2015/AP), passed by the Commissioner of Customs (Appeals), Mumbai - III.

2. Briefly stated the facts of the case are that the Applicant was intercepted by the Customs Officers at the exit gate of CSMI Airport, Mumbai on 20.06.2014 after she had cleared herself through the green channel. Applicant had arrived at Mumbai from Dubai onboard Jet Airways Flight No. 9W-535/20.06.2014 and had filed a Customs declaration showing the nil value of the dutiable goods in her possession. To the query put forth to her about possession of any contraband / dutiable goods, foreign / Indian currency in her baggage or on her person, she had replied in the negative. During the course of her personal search, a metal detector was passed over her body, which gave positive indication of presence and concealment of some metal on her person. Initially, the applicant was recalcitrant. However, on persistent persuasion, she admitted to having concealed gold under her left armpit and removed two bundles containing heavy metal wrapped in black colour adhesive. Even after this, the metal detector when passed over the applicant's body still gave positive indication of presence of metal near her waist. After much persuasion, the applicant admitted that she had concealed gold in her body cavity i.e. rectum and voluntarily ejected out one more colour bundle which was similarly wrapped in black colour adhesive. On opening the two bundles which had been concealed in her left armpit, 4 gold bars having total weight of 464 grams were recovered. From the other bundle kept concealed in her body cavity, 3 gold bars having total weight of 348 grams were recovered. All the 7 gold bars were of 10 tolas each, with foreign markings and of 999.0 purity, totally weighing 812 grams and



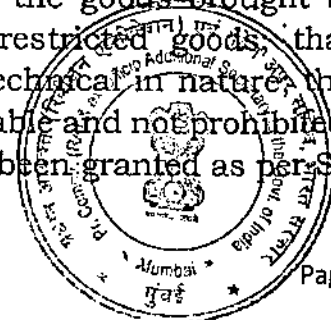
valued at Rs. 20,17,410/-. The applicant admitted to knowledge, possession, carriage, concealment, non-declaration and recovery of the seized gold from her possession. The applicant informed that she had resorted to concealment of the gold bars and non-declaration so as to avoid detection by Customs and to clear the same without payment of any Customs duty.

3. After, due process of law, the Original Adjudicating Authority (OAA) viz, the Addl. Commr. Of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/ML/ADJN/109/2015-16 dated 24.07.2015 issued through F.No. S/14-5-486/2014-15.Adj [SD/INT/AIU/444/2014-APD] ordered for the absolute confiscation of the 7 nos of FM gold bars of 10 tolas each, totally weighing 812 gms, valued at Rs. 20,17,410/- under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962. Penalty of Rs. 2,00,000/- was imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-948/17-18 dated 16.01.2018 issued on 18.01.2018 through F.No. S/49-842/2015/AP) disposed of the appeal holding that he did not find it necessary to interfere in the OIO passed by OAA which was legal and proper.

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

5.01. that the panchanama was not factual and that the gold bars had not been concealed by her but had been carried openly on her person; that she was the owner of the gold and was ready to pay the Customs duty; that she had produced the Invoice; that the goods brought by the applicant were neither prohibited nor restricted goods, that the violation was out of ignorance and was technical in nature, that the SCN itself reveals that the goods were dutiable and not prohibited; that option to redeem the goods ought to have been granted as per Section



125 of the Customs Act, 1962; that there were number of judgements passed by Apex Court, High Courts, Tribunal holding that gold was neither prohibited or restricted;

5.02. to buttress his case, A2 has relied on the following case laws;

(a). UOI v/s. Dhanak M Ramji in W.P. No. 1397 with 1022 of 2009 dated 04.08.2009 (2009-248-ELT-127-Bom.). Goods not prohibited but became prohibited due to violation of law, discretion to release on payment of redemption fine, is maintainable.

(b). T. Elvarasan v/s. Commr. Of Customs (Airport), 2011-266-ELT-167-Tri-Madras on the issue of gold chains brought from Singapore and seized on the ground of non-declaration on arrival; passenger living abroad for more than 6 months and entitled to import gold; gold not prohibited item option to redeem the goods; impugned gold ordered to be released provisionally subject to adjudication proceedings.

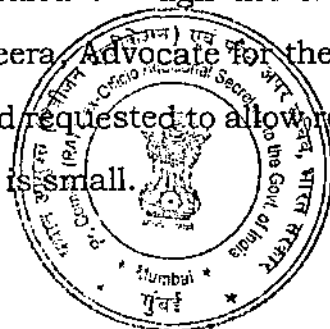
(c). Hon'ble Tribunal Bombay in the case of Sapna Sanjeev Kohli vs. Commr. Of Customs, Airport, Mumbai (2008-230-ELT-305-Tri-Mumbai), Plea of no intention of clearing goods without payment of duty not teneable; Absolute confiscation of gold jewellery not warranted.

(d). Yakub Ibrahim Yusuf v/s. Commissioner of Customs, Mumbai [Final Order No. A/362/2010-WBZ-II/(CSTB) dated 28.10.2010 in Appeal no. C/51/1996-Mum] [2011-263-ELT-685-Tri-Mumbai]. *Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole and makes them liable to absolute confiscation.*

(e). Mohini Bhatia vs. Commr. Of Customs [1999-106-ELT-485-Tri-Mumbai on prohibited goods and restricted goods. Gold was not included in the part II of restricted item.

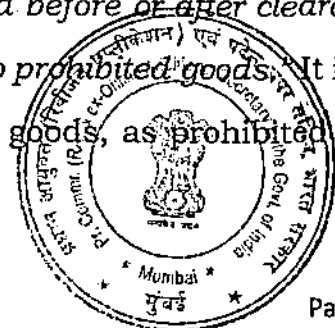
Applicant has prayed to set aside the Order-in-Appeal passed by AA and gold may be released under Section 125 of the Customs Act, 1962 on nominal redemption fine and personal penalty or pass such order as may be deemed fit and proper.

6. Personal hearing in the case was scheduled through the online video conferencing mode for 02.08.2022. Shri. N.J Heera, Advocate for the applicant appeared for physical hearing on 02.08.2022 and requested to allow redemption of gold on nominal fine and penalty as quantity is small.



7. The Government has gone through the facts of the case. The Applicant was intercepted at the exit gate after she had exited through the green channel. To queries whether she was carrying any dutiable goods, the applicant had replied in the negative. Part of the impugned gold was secreted in body cavity i.e. rectum and the remaining too had been kept concealed. It is clear that the applicant had resorted to concealment to smuggle gold and evade duty. The gold is in primary form of high purity. This action manifests that applicant had no intention to pay the Customs duty. The Applicant had not declared the impugned gold as required under section 77 of the Customs Act, 1962. The type of concealment adopted to evade duty is important here. The applicant had pre-planned and selected an ingenious and risky method that she had used to avoid detection and thereby to evade Customs duty. The confiscation of the gold is therefore, justified and thus, the Applicant had rendered herself liable for penal action.

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,



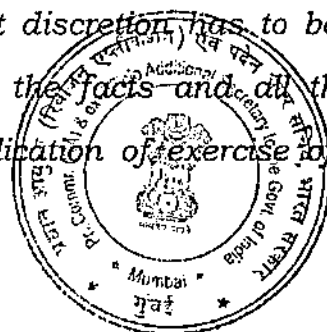
still, if the conditions for such import are not complied with, then import of gold, would squarely fall under the definition, "prohibited goods".

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, is liable for penalty.

10. 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.

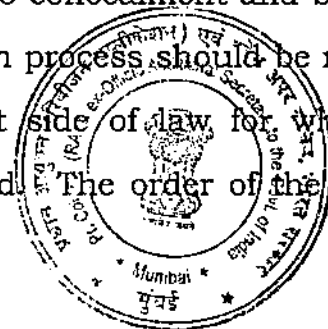
71.1. It is hardly of any debate that discretion has to be exercised judiciously and, for that matter, all the facts and all the relevant surrounding factors as also the implication of exercise of discretion



*either way have to be properly weighed and a balanced decision is required to be taken.*

11. Government observes that the manner in which the gold was concealed i.e. inside her own body, reveals the intention of the Applicant. It also reveals her criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. Quantity of gold was quite substantial and it was in primary form which indicates that the same was for commercial use. Government notes that applicant was a frequent traveller and was well versed with the law and procedure. The circumstances of the case especially the ingenious concealment method adopted, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. The method of concealment indicates and the same was conscious and pre-meditated. All these have been properly considered by the Appellate Authority and the lower adjudicating authority while absolutely confiscating the gold bars.

12. The main issue in the case is the manner in which the impugned gold was being brought into the Country. 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 ingenious with a clear attempt to smuggle gold, it is a fit case for absolute confiscation which would also be 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 gold. But for the intuition and the diligence of the Customs Officer, the 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 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 order of the Appellate



authority upholding the order of the adjudicating authority is therefore liable to be upheld.

13. The Government finds that the penalty of Rs. 2,00,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed by the applicant. The Government does not find it necessary to interfere in the penalty imposed by the appellate authority.

14. Government upholds the order of absolute confiscation of the impugned gold bars passed by the AA. Government does not find it necessary to interfere in the penalty of Rs. 2,00,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 by the OAA and confirmed by the AA.

15. The Revision Application is disposed of on the above terms.

*Shrawan*  
18/10/22

( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 290/2022-CUS(WZ) /ASRA/ DATED 18.10.2022

To,

1. Smt. Manmohan Kaur, H.No. 9, Gali No. 13B, Anand Nagar – B, Patiala, Punjab, Pin : 147 001.
2. Pr. Commissioner of Customs, Terminal – 2, Level – II, Chhatrapati Shivaji International Airport, Sahar, Mumbai – 400 099.

Copy to:

1. A.M Sachwani / V.M Advani / N.J Heera / R.R Shah, Advocates, Nulwala Bldg, Ground Floor, 41, Mint Road, Opp. G.P.O, Fort, Mumbai – 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.

