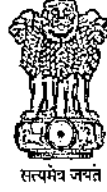


REGISTERED  
SPEED POST



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. 380/25A/B/WZ/2017-RA | 6059 : Date of Issue 27.10.22

---

ORDER NO. 292/2022-CUS (WZ)/ASRA/MUMBAI DATED 9.10.2022  
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 : Pr. Commissioner of Customs, CSI Airport, Terminal-2,  
Mumbai

Respondent : Shri. Abdul Jaleel Shabandri Patel.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-22/17-18 dated 21.04.2017  
issued through S/49-160/2016 AP passed by the  
Commissioner of Customs (Appeals), Mumbai – III, Marol,  
Mumbai – 400 059.

**ORDER**

This revision application has been filed by Pr. Commissioner of Customs, CSI Airport, Terminal-2, Mumbai (herein after referred to as the Applicant) against the Order in appeal No. MUM-CUSTOM-PAX-APP-22/17-18 dated 21.04.2017 issued through S/49-160/2016 AP passed by the Commissioner of Customs (Appeals), Mumbai – III against Shri. Abdul Jaleel Shabandri Patel.

2. Brief facts of the case are that the Customs Officers intercepted the respondent on 31.03.2015 at the exit gate of the CSMI Airport after he had crossed the green channel. The respondent had arrived from Dubai onboard Jet Airways Flight No. 9W-0543/31.03.2015 and on being questioned about possession of any dutiable / contraband goods, he had replied in the negative. Respondent had left column No. 9 of Indian Customs Declaration i.e. total value of dutiable goods being imported' as blank. During the examination of his baggage, a silver coloured packet was found affixed on the airport baggage trolley. Upon opening the packet, one cut piece of gold bar and a gold bar of 10 tolas, totally weighing 526 grams and valued at Rs. 12,42,675/- were recovered.

3. The Original Adjudicating Authority OAA viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/RR/ADJN/344/2015-16 dated 26.02.2016 issued on 29.02.2016 through F.No. S/14-5-263/2015-16 Adjn (SD/INT/AIU/150/2014 AP"B") ordered absolute confiscation of the gold bars weighing 546 grams and valued at Rs. 12,42,675/- under section 111 (d), ) (l) & (m) of the Customs Act, 1962 and also imposed penalty of Rs. 1,25,000/- under Section 112 (a) & (b) of the Customs Act, 1962 on the respondent.

4. Aggrieved by the said order, the applicant filed an appeal before the Appellate Authority viz, Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-22/17-18 dated 21.04.2017 issued through S/49-160/2016 AP granted an option to release the gold bars on payment of a redemption fine of Rs. 2,25,000/-. The penalty imposed on the respondent was sustained.

5. Aggrieved with the aforesaid order passed by the AA, the applicant filed this Revision Application on the grounds that;

5.01. that the OIA was not legal and proper;

5.02. that respondent had accepted to having carried the said gold concealed on the base of the baggage trolley and had admitted to knowledge, possession, concealment, carriage, non-declaration and recovery of the gold.

5.03. that the respondent had not declared the gold in his possession as required under Section 77 of the Customs Act, 1962;

5.04. that the impugned gold could not be treated as bonafide baggage;

5.05. that the impugned gold had been carried in an ingenious manner concealed on the base of the baggage trolley.

5.06. that the AA had erred in granting release of seized gold by releasing the same under Section 125 of the Customs Act, 1962;

5.07. that the respondent relied on case law i.e. Apex Courts Order in the case of Samyanthan Murugesan v/s. Commissioner of Customs (AIR), Chennai-I [2010-254=EKT-A15-SC] wherein gold had been concealed in TV set.

5.08.- that they relied on the Hon'ble Delhi High Courts order in the case of Jain Exports v/s. UOI [1987-29-ELT-753.

5.09. that the AA erred in relying on the case of A. Rajkumari vs. CC, Chennai 2015-321-ELT-540-Tri-Mumbai as this case was dismissed by Apex Court on ground of delay and not on merits.

The applicant in their revision application has prayed that the OIA may be set aside and OIO be restored or pass any order as deemed fit and proper.

6. Personal hearing in the case through the online video conferencing module was scheduled for 13.10.2021, 20.10.2021, 17.11.2021, 24.11.2021, 11.01.2022 and 03.02.2022. None appeared on behalf of the applicant and the respondent. Sufficient opportunities have been granted. The case is being taken up for a decision on the basis of evidence on records.

7. The Government has gone through the facts of the case and notes that the respondent had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. On being questioned the applicant had not disclosed that he was carrying dutiable goods and had he not been intercepted would have walked away with the impugned goods without declaring the same to Customs. Also, gold bars were neatly wrapped in black coloured adhesive tape which had been cleverly taped to the bottom of the trolley to avoid detection which indicates that the respondent did not intend to declare the same to Customs. 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. Now the issue to be decided in this case is whether the impugned gold bars can be allowed to be released on redemption. the Hon’ble Supreme Court of India in *Hargovind Das K Joshi versus Collector of Customs* reported in 1992 (61) ELT 172 has set aside absolute confiscation of goods by Collector without considering question of redemption on payment of fine although having discretion to do so, and remanded the matter to Collector for

consideration of exercise of discretion for imposition of redemption fine as per Section 125 of Customs Act. 1962.

11. Moreover, in a recent judgement by the Hon'ble Supreme Court in the case of M/s Raj Grow Impex and others Vs UOI (*CIVIL APPEAL NO(s). 2217-2218 of 2021 Arising out of SLP(C) Nos. 14633-14634 of 2020 – Order dated 17.06.2021*), it is stated “ .....when it comes to discretion, the exercise thereof has to be guided by law; according to the rules of reason and justice; and has to be based on the relevant considerations.....such an exercise cannot be based on private opinion.” Government notes that there is no past history of such offence/violation by the Applicant. The impugned gold was concealed but this at times is resorted to with a view to keep the precious goods secure and safe. The quantity / type of gold was not commercial in nature. The original adjudicating authority had absolutely confiscated the gold bars, whereas, the appellate authority has granted an option to redeem the gold on payment of redemption fine.

12. The quantity of gold under import is small and is not of commercial quantity. The gold was concealed ingeniously and Government notes that at times travellers resort to such safe keeping for safety reasons to avoid theft of their valuables. There are no allegations that the respondent is a habitual offender and was involved in similar offence 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 misdemeanour is required to be kept in mind when using discretion under Section 125 of the Customs Act, 1962 and while imposing quantum of penalty. Government notes that the appellate authority has rightly allowed to redeem the gold on payment of a redemption fine of Rs.

2,25,000/-. Government finds that the Appellate order is proper and judicious and is not inclined to interfere in the same.

13. In view of the above, the Government upholds the impugned order of the Appellate authority in respect of the impugned gold bars weighing 526 grams. The order passed by the appellate authority is legal and proper.

13. The penalty of Rs. 1,25,000/- (Rupees One Lakh Twenty-five thousand only) imposed on the respondent under Section 112 (a) and (b) of the Customs Act by the OAA and upheld by the AA is commensurate with the omissions and commissions committed and is appropriate.

14. Revision Application filed by the applicant is disposed of on the above terms.

*Shree*  
19/10/22

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

292  
ORDER No. /2022-CUS (WZ) /ASRA/MUMBAI DATED 19.10.2022

To,

1. The Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Terminal - 2, Mumbai - 400 099.
2. Shri. Abdul Jaleel Shabandri Patel, Dil Kush Manzil, II Cross, Shifa Colony, Bhatkal, Karwar, Karnataka.

Copy to:

3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy,
5. Notice Board.