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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. 380/34A/B/WZ/2019 / 6099

: Date of Issue : 27.10.22

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ORDER NO. 295/2022-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.

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Applicant : Pr. Commissioner of Customs, CSMI (Airport), Mumbai.

Respondent : Shri. Jemsheer Kopa Hassainar

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-1262/2018-19 dated 29.03.2019  
issued through F.No. S/49-132/2018 passed by the  
Commissioner of Customs (Appeals) Mumbai-III.

**ORDER**

This revision application has been filed by the Pr. Commissioner of Customs (Airport), Mumbai (hereinafter referred to as the Applicant) against the Order-In-Appeal no. MUM-CUSTOM-PAX-APP-1262/2018-19 dated 29.03.2019 issued through F.No. S/49-132/2018 passed by the Commissioner of Customs (Appeals) Mumbai-III.

2. Briefly stated facts of the case are that the respondent arrived at the Mumbai CSMI Airport on 11.03.2018 and was intercepted by Customs Officers after having crossed the Green channel facility. The respondent failed to declare the dutiable goods in his possession. A gold belt buckle weighing 73 grams and 3 gold pieces, weighing 79 gms were recovered from the respondent which had been concealed in his belt and inside the lining of his zipper. The total weight of the recovered gold belt buckle and 3 gold pieces were 152 gms, valued at Rs. 4,29,015. The respondent had admitted to knowledge, possession, non-declaration and recovery of the impugned gold from his baggage. The respondent was a frequent traveller and had returned back to India after staying at Dubai for 2 days.

3. The Original adjudicating authority (OAA) viz. Asstt. Commr, CSIM Airport, Mumbai vide his Order-In-Original no. DC/'C' dated 11.03.2018 issued through F.No. AirCus/49/T2/2174/2018"C' dated 11.03.2018, absolutely confiscated the gold belt buckle and 3 pieces of gold valued at Rs. 4,29,015/-under Section 111(d) of the Customs Act, 1962. A penalty of Rs 1,00,000 under Section 112(a) and (b) of the Customs Act, 1962 was imposed on the respondent.

4. Aggrieved by this order, the respondent filed an appeal with the Commissioner of Customs (Appeals) Mumbai-III, who vide his Order-In-Appeal no. MUM-CUSTOM-PAX-APP-1262/2018-19 dated 29.03.2019 issued

through F.No. S/49-132/2018 allowed the appeal and set aside the order passed by the OAA. The impugned gold was allowed to be redeemed on payment of a fine of Rs. 1,00,000/-. The penalty of Rs. 1,00,000/- imposed on the respondent by the OAA under Section 112(a) and (b) of the Customs Act, 1962 was reduced to Rs. 50,000/-.

5. The Applicant has filed this Revision Application inter alia on the following grounds of revision, that;

5.01. that the OIA was not legal and proper;

5.02. that respondent had accepted to having carried the said goods cleverly concealed in his belt buckle and inside the lining of his zipper bag;

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 as belt buckle and in inner lining of zipper bag;

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 Court's order in the case of Jain Exports v/s. UOI [1987-29-ELT-753.

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. The respondent vide their written submission dated 15.12.2022 has stated the following;

- 6.01. In their written application submitted on 15.12.2021, they have stated that the order passed by the appellate authority is well-reasoned and the justification / rationale for permitting the redemption of the impugned goods is well founded and was based on solid grounds and sound principles of law.
- 6.02. The reasons for granting redemption of gold has been clearly and rightly expressed in the appellate order.
- 6.03. For the contravention of Section 77 of the Customs Act, 1962, the appellate authority had imposed fine and penalty.
- 6.04. They have submitted that for similar cases, the OAA had allowed the release of gold on payment of redemption fine and penalty.
- 6.05. the respondent has cited a bunch of case laws to buttress their case.
- (i). Birla Corporation Ltd. v/s. Commissioner of C.Ex, [2005 (186) ELT 266 (SC)], on judicial discipline. When question arising for consideration and facts are almost identical to previous case, revenue cannot be allowed to take a different stand.;
  - (ii). Commr. Of C. Ex , Nasik vs. Jain Vanguard Polybutlene Ltd [2005 (1861) ELT 266(SC)], also on judicial discipline and binding principle.;
  - (iii). Nirma Ltd vs. Commr. Of C.Ex, Nashik, [2012 (276) ELT 283 (Tri-Ahmd)], on judicial discipline.
  - (iv). Hargovind Das K Joshi v/s. Collector of Customs [1992 (61) ELT 172 SC], Absolute confiscation of goods without considering question of redemption on payment of fine although having discretion to do so under Section 125, matter remanded back.
  - (v). Alfred Menezes v/s. Commissioner of Customs (Mumbai) [2011 (236) ELT 587 (Tri-Mumbai)], Section 125(1) *ibid* clearly mandates that it is within the power of the adjudicating authority to offer redemption of goods even in respect of prohibited goods.
  - (vi). Commissioner of Customs, Kandla v/s. Deluxe Exports. Order nos. 2064-2076/2000-WBZ/C-II dated 25.07.2000 in Appeals No. C/368, 554 to 564/2000. Adjudication Authority not to decide or investigate as to who is the owner of the goods.
  - (vii). R. Mohandas v/s. Commissioner of Customs, Cochin in WP(C) Nos. 24074 and 39096 of 2015 (H) decided on 29.02.2016. (*recognizes any person based on ownership or possession etc*).
  - (viii). 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.*

(viii). 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.

(ix). Revision Authority, GOI in the case of Abdul Sattar vide its order no. 60/18-Cus dated 09.04.2018 had allowed release of gold which was in the form of stapler pins totally weighing 755.50 grams and valued at Rs. 19,64,300/-.

(x). Etc.

The respondent has prayed to the Revision Authority that the revision application filed by applicant may be summarily rejected and the appellate order may be upheld.

7. A personal hearing in the case was scheduled for 03.09.2019, 06.09.2019. After the change in the Revision Authority, personal hearing through the online video conferencing mode was scheduled for 22.10.2021, 29.10.2019, 02.12.2021 & 08.12.202. Ms. Pushpa Anchan, Superintendent, CSMI Airport had attended the personal hearing on 06.09.2019 on behalf of applicant. Nobody appeared for personal hearing on behalf of the respondent. Since, sufficient opportunities have been given to the respondents, the case is being taken up for a decision on the basis of evidence on records.

8. The Government has gone through the facts of the case and notes that the respondent had failed to declare the goods in his possession as required under Section 77 of the Customs Act, 1962. The respondent had not disclosed that he was carrying dutiable goods and had he not been intercepted would have walked away with the impugned belt buckle made of gold and 3 pieces of gold without declaring the same to Customs. By his actions, it was clear that the respondent had no intention to declare the impugned gold to Customs and

pay Customs duty on it. The Government finds that the confiscation of the gold buckle and 3 pieces of gold was therefore justified.

9. 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”.

10. 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 ‘respondent’ thus, liable for penalty.

11. 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 the 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.*

12. The quantity of gold under import is small and is not of commercial quantity. The part of the gold was melted and converted into a belt buckle. Government notes that at times travellers resort to innovative methods for safe keeping and for reasons of safety, 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. The Government notes that the appellate authority in his OIA has observed that the respondent has to pay more than 65% of the value of the goods on account of redemption fine, penalty and baggage rate of duty and as such there cannot be any bonanza to the respondent. Government finds that the Appellate order is proper and judicious and is not inclined to interfere in the same.

13. The penalty of Rs. 1,00,000/- imposed by the OAA under Section 112(a) and (b) of the Customs Act, 1962 has been reduced to Rs. 50,000/- by the appellate authority. Government finds that the same is commensurate to the omissions and commissions committed by the respondent. Government is not inclined to interfere in the same.

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

  
( SHRAWAN KUMAR )

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

ORDER No. 295 /2022-CUS (WZ) /ASRA/MUMBAI DATED 18.10.2022

To, Pr. Commissioner of Customs, CSI Airport, Terminal - 2, Level-2, Sahar, Andheri, Mumbai-400 099.

1. Shri Jemsheer Kopa Hassainar, Maimoona Manzil, Copa, PO Muthathody, Kasargod, Kerala - 671 123.

Copy to:

2. Adavni, Sachwani & Heera - Advocates, Nulwala Building, Ground Floor, 41- Mint Road, Opp. G.P.O. Fort, Mumbai 400 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy,
5. Notice Board.