



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. 373/46/B/16-RA

7006

Date of Issue

03/12/2024

ORDER NO. 298/2021-CUS (SZ)/ASRA/MUMBAI  
DATED 29.11.2021 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 : Shri. Anbu

Respondent : Commissioner of Customs, Airport, Chennai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
C.Cus-I. No. 594/2015 dated 28.09.2015  
[C4- I/444/O/2015-Air] passed by the Commissioner  
of Customs (Appeals-I), Chennai - 600 001.

ORDER

This revision application has been filed by Shri. Anbu (herein referred to as Applicant) against the Order in Appeal No. C.Cus-I. No. 594/2015 dated 28.09.2015 [C4- I/444/O/2015-Air] passed by the Commissioner of Customs (Appeals-I), Chennai – 600 001.

2. Briefly stated the facts of the case are that the Applicant, was intercepted on 24.03.2014 and 9 gold biscuits each weighing 100 gms, concealed in body cavity i.e. rectum were recovered. The gold biscuits totally weighing 900 were of 24 carats purity and was valued at Rs. 26,91,000/- (Market Value). The applicant had arrived at Anna International Airport, Chennai from Singapore on board Tiger Airways flight No. TR 2638/24.03.2014. Applicant had crossed the green channel without declaring the goods carried and had filed the value as nil in the Customs declaration form.

3. The Original Adjudicating Authority i.e. Jt. Commissioner of Customs (Adjudication-AIR), Chennai vide Order-In-Original No. 136 dated 17.06.2015 [F.No. OS/42/2014-INT.(AIR) / F.No. OS/379/2014-AIU], ordered the absolute confiscation of the gold biscuits, totally weighing 900 gms, valued at Rs. 26,91,000/- under Section 111(d) & 111(l) of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 and imposed a penalty of Rs. 2,50,000/- ( Rupees Two Lakhs Fifty thousand only ) under Section 112(a) of the Customs Act, 1962 on the applicant.

4. Aggrieved by the said order, the applicant filed an appeal before the Commissioner of Customs (Appeals-I), Chennai who vide Order-In-Appeal No. C.Cus-I. No. 594/2015 dated 28.09.2015 [C4- I/444/O/2015-Air], rejected the appeal.

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

5.1. that the impugned order passed by the learned lower authorities are bad in law and on facts and hence liable to be set aside.

- 5.2. That the impugned order has been passed without considering the reply to show cause notice dated 11.06.2015 which was against the basic principles of natural justice.
- 5.3. that the lower authorities had failed to note that the statement was not voluntary and had been retracted.
- 5.4. that the lower authorities failed to note that Foreign Trade and Regulation Act has no application to his case
- 5.5. that the lower authorities failed to note that Section 111(d) of the Customs Act would not apply to the present case.
- 5.6. that the learned authorities failed to consider the various judgements relied upon.
- 5.7. that the lower authority had not recorded the reason for absolutely confiscating the gold and that the reasons given by the appellate authority would not sustain.
- 5.8. that the lower authorities failed to note that under section - 125 an option of redemption was mandatory in case of goods which are were not prohibited and redemption of gold ought to have been given. Relied upon is HARGOVIND DAS K.JOSHI VERSUS COLLECTOR OF CUSTOMS reported in 1992(61) ELT 172 (SC).

The Applicant has prayed that the Revision Authority be pleased to set aside orders of both the lower authorities and to order for re-export and grant any relief and justice.

6. Personal hearing in the case in the online video conferencing mode was scheduled for 18/08/2021, 25/08/2021, 27/10/2021, 10/11/2021. Shri. T Chezhiyan, Advocate for the applicant appeared on line on 27.10.2021 and submitted that though the goods were bodily concealed, since statement has been retracted and receipt of purchase of gold has been produced, the goods may be released on RF.

7. Applicant has filed for condonation of delay. Government notes that the revision application has been filed on 10.03.2016 which 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. Accordingly, Government condones the delay.

8. The Government has gone through the facts of the case. The Applicant was intercepted as he was attempting to walk through the green channel after completing immigration formalities. He had filed a 'nil' Customs Declaration Form. To queries whether he was carrying any dutiable goods, the applicant had denied in the negative. The impugned gold was kept secreted in his body cavity i.e. rectum. It is clear that the applicant had resorted to concealment to evade duty. 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. In this case, the quantum of gold seized too is of commercial quantity. However, what matters is the type of concealment adopted to evade duty. The applicant had pre-planned and selected the method that he would use to avoid detection and thereby to evade Customs duty. The absolute confiscation of the gold is therefore justified and thus, the Applicant had rendered himself liable for penal action.

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 Applicant thus, is 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 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. Government also observes that the manner in which the gold was concealed i.e. inside his own body, reveals the intention of the Applicant. It also reveals his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India even to the point of risking his life. The circumstances of the

case especially the concealment method adopted, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Appellate Authority and the lower adjudicating authority while confiscating the gold pieces absolutely.

13. 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. Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza or profit for an illegal transaction of imports.*". The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring gold. 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 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 and the Revision Application is liable to be dismissed.

14. The applicant has taken a plea that his statement was retracted. The same is not recorded in the both the orders of the lower authorities. This clearly is an afterthought. But in any case, considering the method of concealment, period of stay, quantum of gold recovered etc, the retraction holds no value and is overwhelmed with the weight of the evidence which is against the applicant. Retraction of statement mechanically without explaining the need for keeping the gold in the body cavity, non-declaration of the same, etc does not alter the factual matrix of the case and this plea holds no water.

15. The Government finds that the penalty of Rs. 2,50,000/- imposed on the applicant under Section 112(a) is appropriate and commensurate with the omission and commission committed by the applicant. The Government does not find it necessary to interfere in the order passed by the lower authorities.

16. The Applicant has pleaded for setting aside the Order passed by the Appellate Authority which has upheld the order passed by the Original Adjudicating Authority. The Government, keeping in mind the facts of the case is in agreement with the observations of the Appellate Authority and finds that absolute confiscation is proper and judicious and also, the penalty imposed under Section 112(a) of the Customs Act 1962 is proper and judicious. Further, since the impugned gold has been confiscated absolutely, question of its re-export does not arise.

17. Revision Application is dismissed.

*Shrawan Kumar*  
29/11/21  
(SHRAWAN KUMAR)

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

ORDER No. 298/2021-CUS (SZ) /ASRA/ DATED 29.11.2021

To,

1. Shri. Anbu, S/o. Shri. Saminathan, 38/56, Nehru Street, Avvai Nagar, Choolamedu, Chennai - 600 094.
2. Commissioner of Customs, Anna International Airport, Meenabakkam, Chennai : 600 027.

Copy to:

1. Shri. T. Chezhiyan, Advocate, No. 8, Eldams Road, Alwarpet, Chennai - 600 018. chezhiyanadv@gmail.com.
2. Sr. P.S. to AS (RA), Mumbai.
3. Guard File,
4. File Copy.
5. Notice Board.