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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

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**F.No. 371/251/B/WZ/2018-RA** : Date of Issue

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ORDER NO. 301 /2022-CUS (WZ) /ASRA/MUMBAI DATED 20.10.2022  
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 : Shri. Rajesh Bhatt

Respondent : Pr. Commissioner of Customs (Airport), CSI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
PUN-CT-APPII-000-019-18-19 dated 19.04.2018  
[F.No. V(2)CT(A-II)/335/2017-18] passed by the  
Commissioner (Appeals-II), Central Tax, Pune.

**ORDER**

This revision application has been filed by Shri. Rajesh Bhatt (herein referred to as Applicant) against the Order-in-Appeal No. PUN-CT-APPII-000-019-18-19 dated 19.04.2018 [F.No. V(2)CT(A-II)/335/2017-18] passed by the Commissioner (Appeals-II), Central Tax, Pune.

2(a). Brief facts of the case are that on 28.05.2017, the Officers of Customs had intercepted the Applicant at Pune International Airport where he had arrived from Dubai by Spice Jet Flight No. SG-052 / 28.05.2017. The Applicant had been intercepted after he had cleared himself through the green channel of Customs without filing a Customs declaration form. To the query put forth to him regarding possession of any dutiable goods, he had replied in the negative. The applicant's trolley baggage was screened on the X-ray machine which indicated presence of metallic objects. The handles and inner metallic straps of the trolley bag were broken open to recover these metallic objects. Thereafter, 10 white metallic washers were recovered which were certified as made of gold of 24 karats purity, totally weighing 232.940 grams with market value of Rs. 6,92,997/-

2(b). Applicant informed that he had stayed for five days at Dubai having gone there on 23.05.2017 on a tourist visa. Applicant accepted the fact that he had not filed a declaration and that he was carrying gold in the form of washers which had been coated with rhodium.

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, Pune vide Order-In-Original No. PUN-CUSTOMS-000-ADC-09-17/18 dated 05.02.2018 issued through F.No. VIII/CUS/ADJ/SCN/Bhat/16/2017-18, ordered for the absolute confiscation of the gold washers weighing 232.940 gms and valued at Rs. 6,92,997/- under Section 111 (d), (i), (1) and (m) of the Customs Act, 1962. Further, a penalty of Rs. 75,000/- was imposed on the applicant under Section 112 (a) and (b) of the

Customs Act, 1962. Also, a penalty of Rs. 5000 was imposed on the applicant under Section 114AA of the Customs Act, 1962.

4. Aggrieved by this Order, the applicant preferred an appeal before the appellate authority i.e. Commissioner (Appeals-II), Central Tax, Pune. who vide Order-in-Appeal No. PUN-CT-APPII-000-019-18-19 dated 19.04.2018 [F.No. V(2)CT(A-II)/335/2017-18] upheld in to-to, the OIO passed by the OAA.

5. Aggrieved by this Order, the applicant has filed this revision application on the undermentioned grounds of revision;

5.01. that the order passed by the appellate authority was bad in law and unjust; that the OIA has been passed without due consideration to the documents on record and facts of the case; that the goods were neither restricted nor prohibited was appreciated by the AA; that no previous case has been registered against him; that evasion of Customs duty can be done only in respect of dutiable goods and not on prohibited goods; that option to redeem the goods under Section 125 of the Customs Act, 1962 ought to have been granted by the AA; that various judgements passed by the Apex Court, High Courts, Tribunal have held that gold was neither restricted nor prohibited and therefore it should not be confiscated absolutely.

5.02. to buttress their case, the applicant has relied upon the following case laws;

(i). 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.

(ii). 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.

(iii). 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.

(iv). 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.*

(v). 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 that the impugned gold be released under Section 125 of the Customs Act, 1962 on nominal RF alongwith applicable duty and personal penalty be reduced or to pass any other order as deemed fit

6. The applicant has filed application for condonation of delay of 15 days and has expressed his apologies and has prayed that the delay may be condoned. The applicant has claimed that the OIA was communicated to him on 21.04.2018.

7. 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 and requested that a very small quantity of gold was brought by applicant for personal use. He further requested to allow redemption of gold on nominal RF and penalty.

8. On the issue of condonation of delay, Government notes that the revision application was filed on 03.08.2018. The OIA was issued on 19.04.2018. The applicant has stated that they had received the OIA on 21.04.2018 itself. Accordingly, the applicants were required to file the revision application by 20.07.2018 i.e. within 3 months. Further, an extension period of 3 months was available to the applicants which would have expired on 18.10.2018. Government

notes that the revision application was filed on 03.08.2018 which is well within the extension period i.e. 3 months + 3 months, hence, prayer for condonation is accepted and Government condones the delay.

9. The Government has gone through the facts of the case and notes that the applicant had not declared the gold while availing the green channel facility. Thereafter, on interception he had been asked whether he was carrying any dutiable items to which he had replied in the negative. The impugned gold in the form of washers which had been coated were kept concealed with the express intention of hoodwinking the Customs and evading payment of Customs duty. The quantity of gold is small, of very high purity and was in primary form. The applicant clearly had failed to declare the goods to the Customs at the first instance, as required under Section 77 of the Customs Act, 1962. The gold in the form of washers had been kept hidden in the handles of the bag which were required to be broken to retrieve the gold washers. This reveals that the act committed by the applicant was conscious and pre-meditated. Had he not been intercepted; the applicant would have gotten away with the gold which had been. Therefore, the confiscation of the gold was justified.

10. 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".

11. 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.

12. 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.*

13. The quantity of the gold under import is small and is not of commercial quantity. The gold washers had been kept hidden inside the handles of the trolley bag. 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 applicant is a habitual offender and was involved in similar offence earlier. The quantity of gold and 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.

14. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore, harsh and not reasonable. Government for the aforesaid reasons, is inclined to set aside the absolute confiscation held in the OIA and grant option to release the impugned gold on payment of a redemption fine.

15. Government notes that the penalty of Rs. 75,000/- imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962 is commensurate with the omissions and commissions committed and is not inclined to interfere in the same.

16. Government notes that once penalty has been imposed under Section 112(a) & (b) of the Customs Act, 1962, there is no necessity of imposing penalty under Section 114AA of the Customs Act, 1962. Therefore, the penalty of Rs.

5000/- (Rupees Five thousand only) imposed under Section 114AA of the Customs Act, 1962 is liable to be set aside.

17. Accordingly, the Government sets aside the impugned order of the appellate authority. The impugned gold in the form of 10 nos of washers, coated with rhodium, totally weighing 232.900 grams and valued at Rs. 6,92,997/- are allowed redemption on payment of fine of Rs. 1,30,000/- (Rupees One Lakh Thirty Thousand only). The Government finds that the penalty of Rs. 75,000/- (Rupees One lakh only) imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed. The penalty of Rs. 5000/- imposed on the applicant under Section 114AA of the Customs Act, 1962 is set aside.

18. Revision Application is disposed of on the above terms.

*Shrawan*  
20/10/22

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

ORDER No. 301. /2022-CUS (WZ) /ASRA/ DATED 20.10.2022

To,

1. Shri. Rajesh Bhatt, Plot No. 109, Opp. Sindhu Society, Jaripatka, Nagpur City, Maharashtra, Pin : 440 014.
2. Commissioner of Customs, GST Bhavan, 41/A, Sassoon Road, Pune - 411 001.

Copy to:

1. Shri. N.J Heera, Advocate, Nulwala Bldg, Ground Floor, 41, Mint Road, Opp. GPO, Fort, Mumbai - 400 001.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.