

REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

(i). F. No. 371/34/B/WZ/2019-RA & ^{16/32} Date of Issue : 12.11.2022
(ii). F. No. 371/423/B/WZ/2019-RA (Duplicate of (i) above, submitted twice by applicant).

ORDER NO. ³²⁰ 321 /2022-CUS (WZ)/ASRA/MUMBAI DATED 15.11.2022 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 : Shri. Afzal Harun Sayed.

Respondent : Commissioner of Customs, Custom House, Marmagoa,
Goa - 403 803.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
GOA-CUSTM-000-APP-078-2018-19 dated 21.12.2018
issued on 11.01.2019 through F.No.
A-11/CUS/GOA/2018-19 passed by the Commissioner
(Appeals) CGST & Customs, Goa.

ORDER

These two revision applications i.e. 371/34/B/WZ/2019-RA and 371/423/B/WA/2019-RA have been filed by Shri. Afzal Harun Sayed (herein after referred to as the Applicant) and it is noticed that they both pertain to the same Order-in-Appeal no. GOA-CUSTOM-000-APP-078-2018-19 dated 21.12.2018 issued on 11.01.2019 through F.No. A-11/CUS/GOA/2018-19 passed by the Commissioner (Appeals) CGST & Customs, Goa. A duplication in numbering of these Revision Applications has occurred primarily due to submission of these applications at different points in time by the applicant. RA no. 371/34/B/WZ/2019-RA was filed by applicant on 20.03.2019 and RA no. 371/423/B/WA/2019-RA was filed by the Applicant's Advocate on 16.10.2019. The RA bearing F.No. 371/34/B/WZ/2019-RA is being taken up for a decision and the reference of the other RA is made in this revision order only for administration / office records purpose.

2. Brief facts of the case are that the applicant, was intercepted by the Customs Officers at Dabolim Airport where he had arrived from Dubai onboard Air India Flight AI-994 and had crossed the green channel. The applicant had stayed abroad for 20 days. The goods listed at Table No. 1 were recovered from the applicant.

Table No. 1.

Sr. No.	Description of goods	Quantity	Value in Rs.	Remarks
A.	Goods allowed under Rule 3 of the B.R. 1998 under Rules 7 of Baggage Rules, 1998.	-	50,000/-	Allowed under FA
1.	Chain of Raw Gold weighing 90 grams.	1 nos.	2,47,001/-	Proposed for ITC action.
2.	Raw Gold chain with black beads totally weighing 69 grams.	1 nos.	1,89,368/-	
3.	Gold Pendant, weighing 12 grams.	1 nos.	32,934/-	
4.	Gold Ear Tops, totally weighing 16 grams.	1 nos.	43,911/-	
5.	Gold Bangles, totally weighing 90 grams.	6 nos.	2,47,001/-	
6.	Zibad Termes Saffron, 40 Pkts of 25 grams each.	1 Kg.	1,00,000/-	
7.	Character Artist & Saloon Makeup Palette and Glitter (each package valued at Rs. 7,200/-)	6 nos.	43,200/-	
8.	Two Character Glow Kit (each package valued at Rs. 5,400/-)	2 nos.	10,800/-	
9.	Four Character Smoked (each package valued at Rs. 1,440/-)	4 nos.	5,760/-	

3. The Original Adjudicating Authority viz the Dy. Commissioner of Customs, APT, Marmagoa, Goa, vide Order-In-Original No. 50-DC(Apt) dated 27.08.2018 held as under;

(i). Goods at Sr. no. A of Table no. 1, valued at Rs. 50,000/- were allowed under 'free allowance',

(ii). Goods at Sr. no. 3 to 9 of Table no. 1, valued at Rs. 4,83,606/-, were confiscated under Section 111(d) of the Customs Act, 1962, however, the same were allowed to be redeemed on payment of a fine of Rs. 50,000/- within 15 days.

(iii). Goods at Sr. no. 1 & 2 of Table no. 1 above, valued at Rs. 4,36,369/- were confiscated absolutely under Section 111(d) of the Customs Act, 1962,

(iv). A penalty of Rs. 1,00,000/- was imposed on the applicant under Section 112 of the Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the Appellate Authority viz, Commissioner (Appeals) CGST & Customs, Goa who vide Order-in-Appeal no. GOA-CUSTOM-000-APP-078-2018-19 dated 21.12.2018 issued on 11.01.2019 through F.No. A-11/CUS/GOA/2018-19 held as under;

(i). the absolute confiscation of the goods mentioned at Sr. no. 1 & 2 was set aside and an option to redeem the same on payment of a fine of Rs. 50,000/- was granted to the applicant under Section 125(2) of the Customs Act, 1962.

(ii). the prayer for re-export of the goods was rejected.

(iii). the redemption fine of Rs. 50,000/- imposed on the applicant on the goods mentioned at Sr. No. 3 to 9 under Section 125 of the Customs Act, 1962 was upheld.

(iv). The penalty of Rs. 1 lakh imposed on the applicant under Section 112(a) of the Customs Act, was upheld.

5. Aggrieved with the aforesaid order passed by the appellate authority, the Applicant has filed this revision application inter alia on the grounds that;

- 5.01. the gold ornaments were for personal use,
- 5.02. that the chain had been worn by him,
- 5.03. that the bangles were of 18 karats gold,
- 5.04. that the chain with black beads, 5 bangles, were worn by the applicant's wife.
- 5.05. that the cost of the saffron was Rs. 40,000/Kg in Dubai.
- 5.06. that the goods had not been concealed.
- 5.07. that he relied on the case law of Pabitha Thillainathan and anr, 2019-TIOL-458-CESTAT-BANG, that the Sri. Lankan nationals were allowed to re-export the goods.

Applicant has prayed that the gold jewellery, saffron and assorted items may be released or goods may be allowed to be re-exported, fine and penalty may be waived or pass any other order as deemed fit.

6. Online personal hearings in the case through the video conferencing mode were scheduled for 03.12.2021, 09.12.2021, 05.01.2022, 19.01.2022, 23.02.2022 and 02.03.2022. None appeared for the applicant and respondent. Sufficient opportunities have been given to the applicant and respondent. The case is being taken up for a decision on the basis of evidence on record.

7.1. Government notes that the applicant in RA no. 371/423/B/WZ/2019 has filed a condonation of delay as the same was filed on 16.10.2019. Government notes that RA no. 371/34/B/WZ/2019 was filed on 20.03.2019 and there is no delay. Both the RA's pertain to the same OIA no. GOA-CUSTOM-000-APP-078-2018-19 dated 21.12.2018 issued on 11.01.2019 through F.No. A-11/CUS/GOA/2018-19 passed by Commissioner (Appeals) CGST & Customs, Goa. Government notes that RA no. 371/423/B/WZ/2019 was filed subsequently by the applicant and the same led to it getting duplicated in the records. Since, RA no. 371/34/B/WZ/2019 was filed on 20.03.2019 which is

within the time limit, Government proceeds to decide the matter. The other RA i.e. F.No. 371/423/B/WZ/2019 is infructuous and reference is mentioned in this order only for administrative / office records.

7.2. At the outset, the Government notes that the Applicant had brought the gold which had not been declared. A true declaration had not been given to the Customs as required under section 77 of the Customs Act, 1962 for possession of any dutiable goods and therefore the confiscation of the gold was justified and the applicant had rendered himself liable for penal action for his act of omission and commission.

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 'Applicants' thus liable for penalty.

10. Also, in a recent case, discretion of the authorities to consider the release of the goods was decided by the Apex Court wherein 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.

11. Government notes that the quantity of gold jewellery was small. This is a case of non-declaration rather than a case of smuggling. Government notes that the OAA had except for the chain of raw gold weighing 90 grams and a raw gold chain with black beads weighing 69 grams had released the remaining goods i.e. saffron, gold pendant, gold ear tops, gold bangles, make up kit etc on payment of a redemption fine of Rs. 50,000/-. Further the remaining items i.e. a chain of raw gold weighing 90 grams and a raw gold chain with black beads weighing 69 were released by the AA on payment of a redemption fine of Rs. 50,000/-. No case has been made out that the applicant is a habitual offender. On the issue of the plea to allow re-export which has been denied, Government notes that the AA is correct as the applicant is an Indian national and had stayed overseas for 20 days only. Government finds that the appellate order is proper, legal and judicious and does not merit interference. Government is inclined to uphold the appellate order.

12. Government finds that the penalty of Rs.1,00,000/- imposed under Section 112 of the Customs Act, 1962, is appropriate and is commensurate with the omissions and commissions committed. Government is not inclined to interfere in the same.

13. As regards the plea put forth by the applicant that the ornaments were for personal use, the chain had been worn, bangles were of 18K, cost of the saffron was Rs. 40,000/kg at Dubai etc, Government finds that all these have been duly considered by the lower authorities while allowing redemption of the goods. Even the baggage allowance has been allowed to the applicant. Government does not find any merit in these averments raised by the applicant.

14. On the issue about the applicability of the case law of Pabitha Thillainathan and anr., raised by the applicant, Government has given due

consideration to this contention and observes that this case law is not applicable to the applicant inasmuch as the same pertained to a foreign national who returned back whereas, in this case, the applicant was abroad only for a period of 20 days.

15. In view of the above, the Government upholds the appellate order as the same is proper and judicious and does not find it necessary to interfere in the same.

16. Accordingly, the Revision Application is rejected.


15/11/22
(SHRAWAN KUMAR)

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

ORDER No. ³²⁰⁻ 321 /2022-CUS (WZ) /ASRA/ DATED 15 .11.2022

To,

1. Shri. Afzal Harun Sayed, **Address 1** : R/o. Moti Villa, Sr. No. 313, Flat No. 301, 2nd Floor, Diamond Bakery Lane, Fatima Nagar, Pune - 410 013; **Address 2** : C/o. Fazal Haroon Sayyed, Hundekari Plaza, Flat No. 404, 4th Floor, Above Muslim Bank, Ladies Branch, New Nana Peth, Pune : 411 003.
2. Commissioner of Customs, Custom House, Marmagoa, Goa - 403 803.

Copy to:

3. Shri. Wasim Saikh, Advocate, Flat No. 112, 4th Floor, Naaz Palace, Lane No. 6, Mitha Nagar, Kondhwakhurd, Pune : 411 048.
4. Sr. P.S. to AS (RA), Mumbai.
5. File Copy.
6. Notice Board.