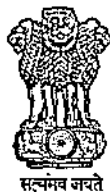


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre – I, Cuffe Parade,
Mumbai-400 005

F.No. 371/02-A,B,C,D & E/B/WZ/2018-RA/6644: Date of Issue 23/11/2022

ORDER NO. ³²⁹⁻³³³ /2022-CUS (WZ)/ASRA/MUMBAI DATED 22.11.2022
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.

F.No. 371/02-A,B,C,D & E/B/WZ/2018-RA

Applicant No. 1. : Shri. Karar Hussain,
Applicant No. 2. : Shri. Syed Muqrib Raza,
Applicant No. 3. : Shri. Syed Naveed Abbas,
Applicant No. 4. : Shri. Syed Ummar Hathaff and
Applicant No. 5. : Shri. Mirza Mohammed Abbas } **APPLICANTS**

Respondent : Pr. Commissioner of Customs, CSMI Airport, Mumbai.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No.
MUM-CUSTM-PAX-APP-737/17-18 dated 21.11.2017
issued on 22.11.2017 through F.No. S/49-930/2015-AP
passed by Commissioner of Customs (Appeals), Mumbai
– III.

ORDER

These revision applications have been filed by S/Shri. (i). Karar Hussain, (ii). Syed Muqrib Raza, (iii). Syed Naveed Abbas, (iv). Syed Ummar Hathaff and (v). Mirza Mohammed Abbas (hereinafter referred to as the Applicants or alternately as Applicants no. 1 to 5 resp. or A1 to A5) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-737/17-18 dated 21.11.2017 issued on 22.11.2017 through F.No. S/49-930/2015-AP passed by Commissioner of Customs (Appeals), Mumbai – III.

2(a). Brief facts of the case are that on 02.02.2014, the Applicants who had arrived onboard Air India Flight no. AI-343/02.02.2014 were intercepted by the Customs Officers at the exit gate of CSMI Airport, Mumbai after they had cleared themselves through the green channel. A1, A2 and A3 were international passengers having arrived from Singapore while A4 and A5 were domestic passengers who had arrived from Chennai. Each of the 3 international passengers had filed a Customs gate pass (CGP) and the column pertaining to the declaration value of dutiable goods in their possession had been left blank. The applicants were individually queried about possession of any dutiable goods or gold and they had all replied in the negative. As part of the personal search, the applicants were requested to pass through the Door Frame Metal Detector (DFMD), which indicated the presence of some heavy metal concealed on their person. Thereafter, a hand metal detector had been passed, which too indicated the presence of metal. Examination of the applicants led to the recovery of gold, the details of which including the quantity, value, recovery from etc are given at Table 1 below;-.

Table No. 01.

Applicant, Status Arrived from.	CGP filed	Quantity of gold recovered and seized	Total Weight in grams	Value in Rs.	Recovered from
(a)	(b)	(c)	(d)	(e)	(f)
A1, International Singapore	Yes	8 FM gold bars of 10 tolas each 999.0 all pure.	932.800	23,44,033/-	Inside the Pant pocket worn by him.
A2, International Singapore	Yes	2 FM gold bars of 1 kg each and 2 FM gold bars of 10 tolas each all 999.0 pure	2233.200	56,11,764/-	Inside pocket of shirt worn by him
A3, International Singapore	Yes	1 FM gold bar of 1 kg and 5 FM gold bars of 10 tolas each, all 999.0 pure	1583	39,77,890/-	Inside the pocket of blazer worn by him.
A4, Domestic Chennai	No.	3 FM gold bars of 100 gram each, 999.9 pure.	300	7,52,864/-	Inside the shoe worn by him
A5, Domestic Chennai	No.	2 FM gold bars of 1 kg each, 999.9 pure.	2000	50,25,760/-	Inside the shoe worn by him
		TOTAL	7,049	1,77,12,311	

2(b). A1, A2 and A3 in their deposition recorded under Section 108 of the Customs Act, 1962 stated that the gold bars did not belong to them and that they had carried the same for a monetary consideration. They did not possess the invoices for the purchase of the gold bars and admitted that they had not declared the gold with an intention to evade payment of Customs duty.

2(c). A4 and A5 in their deposition recorded under Section 108 of the Customs Act, 1962 stated that they each had been handed over the gold bars onboard the aircraft by some person who were international passengers travelling from Singapore. They did not possess the invoices for the purchase of the gold bars and had not declared the gold.

3. After due process of investigations and the law, the Original Adjudicating Authority viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. JC/RR/ADJN/2015-16 dated 31.08.2015 issued on 13.08.2015 under F.No. S/14-5-125/2014 Adjn [SD/INT/AIU/86/2014.AP'C] ordered for the absolute confiscation of the impugned gold bars listed at Table No. 01 above. Also, a penalty was imposed on each of the applicants under Section 112(a) and (b) of the Customs Act, 1962. The details of the quantity of

gold, it's value and the quantum of penalty imposed on each of the applicants is listed at Table 2, below;-

Table No. 02

Applicant	Total Weight in grams	Value in Rs.	Quantum of penalty imposed by OAA in Rs.
A1	932.800	23,44,033/-	2,50,000/-
A2	2233.200	56,11,764/-	6,00,000/-
A3	1583	39,77,890/-	4,00,000/-
A4	300	7,52,864/-	75,000/-
A5	2000	50,25,760/-	5,00,000/-
	7,049	1,77,12,311	

4. Aggrieved by the said order, the applicants had filed appeals before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-737/17-18 dated 21.11.2017 issued on 22.11.2017 through F.No. S/49-930/2015-AP did not find any merits in the appeals and rejected the same.

5. Aggrieved with the above order, the Applicants have filed this revision application. A co-mingled statement of facts and prayer have been submitted by the applicants. They have stated that the OAA and AA have violated the principles of natural justice and non-declaration of mind was evident from the order passed by the AA who had ignored the deficiencies in the panchanama and investigations which had been demonstrated in the Appeal Memorandum filed before the AA and had enclosed the same. The grounds of revision therein are as under;

5.1. that the timing recorded in the panchanama was 01:55 hrs which was not correct as the given time the flight had not taken off from Singapore; that availability of the weighing machine was not recorded in the panchanama; that the description of the shoes worn by the applicants had not been mentioned in the panchanama; that wrong method of valuation had been adopted; that the shoes had not been seized; that the OAA was not on merits; that even though the applicants had claimed ownership of the gold under seizure they were all stamped as carriers by the investigating agency; that the various names disclosed by the applicants were not mentioned in the SCN; that they have relied upon judgement dated 31.08.1977 of Bombay High

Court in the case of State of Maharashtra vs. Laxmichand Varhomal Chugani which had held that '*... it does not appeal to us that a person who is mere carrier is much less involved in this nefarious trade of smuggling than a person at whose instance the goods are carried.*'

5.02. that the applicants have mentioned the duties of the Escort Officer as stipulated in the Customs Manual;

5.03. that the goods were not notified goods purchased at Chennai and hence, could not be termed as smuggled goods;

5.04. they have relied on the following cases laws;

(a). Aslam Noor Mohammed vs. CCs – 2001-169-ELT-243-Mumbai, on the issue of smuggled goods.

(b). Sadbhavana vs. Commissioner of Customs – 2003-158-ELT-652-New Delhi on the issue of burden to prove smuggled character of goods lies on department.

(c). Commissioner of Customs vs. National Radio Products – 2003-156-ELT-908 on the issue that burden of proof lies with the department unless goods are notified under Section 123.

(d). Godari Rai vs. Commr. Of Customs – 2003-160-ELT-1027 on the issue that no evidence placed by Revenue to show that the goods were smuggled.

(e). M/s. A G International vs. CC, Allahabad on the issue that smuggled goods onus to prove is on Revenue

5.05. that order of absolute confiscation was not sustainable; they have relied on the following case laws;

(a). Madras High Court – Ch. Kamala, Narasimha Looms and others vs. Appropriate Authority and others – 199-240-ITR-63-Mad.

(b). Apex Court – Commr. Of C.Ex, Chandigarh-II, Delhi vs. M/s. Steel Strips Ltd and M/s. Perfect Strips and others,

(c). CESTAT, Bangalore – Jindal Vijaynagar Steel Ltd vs. Commr. Of C.Ex.

(d). Bombay High Court – Jayantilal Thankkar & Co. vs. UOI

5.06. Claim of ownership and request for redemption of gold bars; that the owners had claimed ownership of the gold bars.

Under the circumstances of the case, the applicants have prayed to the Revision Authority to release the gold unconditionally, on payment of duty and to drop further proceedings.

6. Personal hearings in the case was scheduled for 03.08.2022. Shri. Prakash Shingrani, Advocate, appeared for personal hearing on 03.08.2022 and submitted that all five applicants have no connection with each other. He reiterated earlier submissions. He requested to release gold on reasonable fine and penalty.

7. The Government has gone through the facts of the case. The Applicants were intercepted after they had crossed the green channel. They had not declared the gold bars in their possession. A1, A2 and A3 were carrying large quantity of gold which was in primary form. They had not admitted to the gold even though the DFMD had indicated the presence of metal on their person. They had harboured a clear intention not to declare the gold and evade payment of customs duty. A4 and A5 were travelling in the domestic sector of the flight and each had picked up the gold bars from their contacts who were international passengers on the same flight. An ingenious method was adopted by them to smuggle the gold. The applicants had no intention to declare the gold and pay Customs Duty. The large quantity of the gold bars were discovered only when the Applicants had been intercepted and were thoroughly checked. The Applicants had not declared the gold bars as required under section 77 of the Customs Act, 1962. The quantity of gold recovered is quite large, of commercial quantity and in the form of bars / biscuits (of 1 tola each) and it was cleverly, innovatively concealed to avoid detection. The confiscation of the gold is therefore, justified and the Applicants have rendered themselves liable for penal action.

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. 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.

11. The main issue in the case is the quantum and 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 innovative, quantity being large and commercial, there being clear attempt to smuggle gold bars i.e. gold in primary form, is a fit case for absolute confiscation as a deterrent to such offenders. Applicants had identified an international flight which had a domestic leg and had planned their sortie to co-mingle with domestic passengers with an express intention to evade payment of Customs duty. Had it not been for the alertness of the Officers, the applicants would have very well succeeded in their plans. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered for the absolute confiscation of gold. The same was upheld by the appellate authority. In the instant case, an attempt to smuggle the gold bars was made

using an innovative method. This clearly indicates that the applicants had no intention to declare the gold in their possession to Customs. Such acts of misusing 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.

12. The quantum of gold found on A4 who was a domestic passenger, is not substantial, but the method adopted to smuggle the gold i.e. he collected the gold bars from an international passenger, slipped it in his shoes and attempted to smuggle the same. The modus is ingenious and his attempt is no less than that of the others.

13. The applicants have raised that there were certain discrepancies in the drawal of the panchanama about the correct timing recorded, the weighing scales etc. The fact remains that a large quantity of gold was recovered from the applicants. They had not declared the same and had cleverly hidden the same. In the OIO at para 8.3, these discrepancies pointed out by the applicants have been discussed and dealt with. The AA too had dealt with this issue. This attempt of the applicants to take shelter of these discrepancies has been rightly negated by the OAA as being minor and clerical in nature and that these does not alter the material fact that huge quantity of gold was recovered. Government is not inclined to give credence to this claim made by the applicants.

14. For the reasons cited above, Government finds that the OIO passed by the OAA is legal and proper and considering the gravity of the offence, the OAA had used his discretion in absolutely confiscating the gold bars. The same has been rightly upheld by the AA. Government does not find it necessary to interfere in the same.

15. The Government notes that the appellate authority has upheld the penalty imposed by the adjudicating authority under Section 112 (a) and (b) of

the Customs Act, 1962. The Government is in agreement with the quantum of penalty imposed on each of the applicants. The penalty would act as a deterrent to others too who would harbor such plans to defraud the exchequer. Government finds that the quantum of penalty imposed on the applicants is commensurate with the omissions and commissions committed by them.

16. The order of the Appellate authority is therefore liable to be upheld in its entirety and the Revision Application is liable to be dismissed.

17. Accordingly, Government upholds the Appellate Order. The revision applications filed by the applicants fails.

18. Accordingly, the five Revision Applications are hereby, dismissed.


(SHRAWAN KUMAR)

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

ORDER No. ³²⁹⁻³³³ /2022-CUS (WZ) /ASRA/MUMBAI DATED ²².11.2022.

To,

1. Shri. Karar Hussain, IK Main Road, Alipur, Gowribidanur TQ, Chikballapur, Karnataka, Pin : 561 213,
2. Shri. Syed Muqrib Raza, 104, Shanboog Street, 1st Main Road, Alipur, Chikballapur, Karnataka, Pin : 561 213.
3. Shri. Syed Naveed Abbas, 90, IK Main Road, Alipur, Gowribidanur TQ, Chikballapur, Karnataka, Pin : 561 213,
4. Shri. Syed Ummar Hathaff, 134/80, Saitbeedli Lane, Perambur High Road, Jamaliya, Chennai : Pin : 600 012,
5. Shri. Mirza Mohammed Abbas, Door No. 9, 1st Floor, Syed Salman Apartment, 1st Cross, Muniswamy Garden Neelsandra, Bangalore, Pin : 560 047.
6. Pr. Commissioner of Customs, Terminal - 2, Level-2, Sahar, Andheri West, Mumbai - 400 059.

Copy To,

1. Shri. Prakash K. Shingrani, 12/334, Vivek, New MIG Colony, Bandra West, Mumbai : 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
- ~~3.~~ File Copy.
4. Notice Board.