

REGISTERED  
SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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(i). F.No. 371/400/B/WZ/2019-RA/6851 : Date of Issue 25/11/2022

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ORDER NO. 342 /2022 CUS (WZ)/ASRA/MUMBAI DATED 24.11.2022  
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.

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(i). F.No. 371/400/B/WZ/2019-RA

Applicant : Shri. Rashid Chunnu Shaikh

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

Subject : Revision Applications filed respectively, under Section 129DD  
of the Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-201/2019-20 dated 19.06.2019 issued on  
27.06.2019 through F.No. S/49-361/2018] passed by the  
Commissioner of Customs (Appeals), Mumbai – III.

**ORDER**

This revision application has been filed by Shri. Rashid Chunnu Shaikh (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-201/2019-20 dated 19.06.2019 issued on 27.06.2019 through F.No. S/49-361/2018] passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant on arrival at CSMI Airport, Mumbai from Delhi 03.02.2017 by Air India Flight No. AI-865 which was of domestic sector was intercepted by the Customs Officers as he was proceeding to the exit gate from belt no. 13. On being questioned, applicant informed that he had earlier arrived at IGI Airport, New Delhi from Dubai on same day i.e. 03.02.2017 by Indigo Airlines Flight no. 6E-22 / 02.02.2017. On screening of his checked-in baggage, a suspicious dark image indicating presence of high density metal was seen. Examination of the applicant's baggage was carried out. A 'PHILIPS' electric juicer was found which was scanned and showed a dark image. The electric juicer was opened and a special cavity inside the cylindrical rotor was found. Crude Gold weighing 1048 grams of 24 Karats valued at Rs. 27,81,308/- in shape of hollow cylinder were recovered. The applicant in his statement recorded under Section 108 of the Customs Act, 1962 informed that he was a frequent traveller and in the past was involved in carrying RMD Gutkha, cosmetics and cigarettes. He revealed that the gold did not belong to him and had carried the same for a monetary consideration.

3. After due process of the law, the Original Adjudicating Authority, viz Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-in-Original No. ADC/AK/ADJN/202/2017-18 dated 21.03.2018 issued from F.No. S/14-5-

35/2017-18-ADJN (SD/INT/AIU/23/2017-AP'A)] ordered for the absolute confiscation crude gold of cylindrical shape, of 24K purity, totally weighing 1048 grams and valued at Rs. 27,81,308/- under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962 and a penalty of Rs. 4,00,000/- was also imposed on the applicant under Section of 112 (a) and (b) of Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-201/2019-20 dated 19.06.2019 issued on 27.06.2019 through F.No. S/49-361/2018] held that the appeal was badly delayed and could be rejected on grounds of delay, itself. However, on grounds of merits too, the AA did not find it necessary to interfere with the OIO passed by the OAA.

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

5.01. that the appellate authority had shifted his stand in similar cases and had granted option of redemption.

5.02. that they crave to refer and rely upon orders in similar cases to establish that the appellate authority had allowed redemption.

Applicant prayed to the revisionary authority to set aside the order of the appellate authority and to reduce the personal penalty or pass any order as deemed fit.

6. Personal hearing in the case through the online video conferencing mode was scheduled for 10.08.2022, 24.08.2022. Shri. Prakash Shingrani appeared in the office on 10.08.2022 for the personal hearing. He submitted that quantity of gold is small and requested for release of goods on reasonable RF and penalty.

7. The applicant has filed an application praying for condonation of delay. Government notes that the OIA was passed by the AA on 19.06.2019 which had been issued on 27.06.2019. In the FORM CA-8 filed by the applicant he has revealed that the OIA was communicated to him on 27.06.2019, itself. Government notes that the revision application was filed on 01.10.2019. Government finds that the revision application is filed within the extension / condonable period of 3 months available to the applicant over and above the statutory limit period of 3 months. i.e. 3 months + 3 months. Government condones the delay.

8. The Government has gone through the facts of the case and notes that the applicant had passed through the green channel and had managed to exit from the IGI Airport, New Delhi without declaring the gold and had evaded payment of Customs duty. He had adopted an ingenious method of concealment and had converted the gold and given it a cylindrical shape and kept it concealed in the juicer. Thereafter, on interception at CSMI Airport where he had appeared as a domestic passenger, he had been asked whether he was carrying any dutiable items to which he had replied in the negative. The impugned gold had been ingeniously concealed inside the rotor of the motor of the juicer. The gold was of very high purity and was in primary form, and the substantial quantity indicates that the same was for commercial use. 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. Further, the applicant had cleverly and ingeniously concealed the gold in the rotor of the motor of the juicer. The applicant admittedly is a frequent traveller and was aware of the law and procedure. Also, he admitted that earlier had been caught by the Customs at CSIA for carrying RMD gutkha, cosmetics and cigarettes. The nature of concealment reveals the mindset of the applicant to not only evade duty but smuggle the gold. It also reveals that the act committed by the applicant was conscious and pre-meditated. The applicant was

given an opportunity to declare the dutiable goods in his possession but having confidence in the nature of his concealment, he denied carrying any gold. Had he not been intercepted, the applicant would have gotten away with the gold concealed in the juicer.

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, 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 observes that besides the quantum of gold and the high purity which indicates that the same was for commercial use, the manner in which it was attempted to be brought into the country is vital. The impugned gold was cleverly, consciously and ingeniously concealed which reveals the intention of the applicant. It also revealed his criminal bent of mind and a clear intention to evade duty and smuggle the gold into India. The purity and primary form of the gold indicated that the same was for commercial use. The aforesaid quantity,

purity and ingenious concealment, probates that the applicant had no intention of declaring the gold to the Customs at the airport. The applicant is a habitual offender and had admitted to having indulged in smuggling of gutkha, cigarettes etc. All these have been properly considered by the Original Adjudicating Authority while ordering the absolute confiscation of the gold and appellate authority had rightly upheld the same.

13. The main issue in the case is the manner in which the impugned gold was being brought into the Country. The applicant had managed to clear from the IGI Airport, New Delhi without declaring the gold and payment of Customs duty. 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, conscious and ingenious, type of gold being for commercial use, this being a clear attempt to brazenly smuggle the impugned gold, is a fit case for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of the impugned gold. But for the intuition and the diligence of the Customs Officer, the gold would have passed undetected. If the gold is not detected by the Custom authorities, the passenger gets away with smuggling and if detected, 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. Government is in agreement with the order of the AA absolutely confiscating the impugned gold. The absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity. Considering the aforesaid facts, Government is inclined not to interfere in the order of absolute confiscation passed by the AA.

14. Government finds that the penalty of Rs. 4,00,000/- imposed on the applicant by the OAA under Section 112(a) & (b) of the Customs Act, 1962 and upheld by the AA is commensurate with the omissions and commissions committed and is not inclined to interfere in the same.

15. For the aforesaid reasons, the Government finds that the OIA passed by the AA is legal and proper and does not find it necessary to interfere in the same. The Revision Application filed by the applicant, fails. .

16. Accordingly, for the reasons stated above, the Revision Application filed by the applicant is dismissed.

*Shrawan*  
24/11/22  
( SHRAWAN KUMAR )

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

ORDER No. ~~342~~ /2022-CUS (WZ) /ASRA/MUMBAI DATED <sup>24</sup>.11.2022

To,

1. Shri. Rashid Chunnu Shaikh, Room No. 51, 4<sup>th</sup> Floor, Indian House Building, Pate Baburao Marg, 9<sup>th</sup> Cross Lane, Masjid Galli, V.P Road, Grant Road, Mumbai – 400 004.
2. Pr. Commissioner of Customs, CSI Airport, Terminal – 2, Level – 2, Sahar, Andheri East, Mumbai – 400 099.

Copy to:

1. Shri. Prakash Shingrani, Advocate, 12/334, Vivek Marg, New MIG Colony, Bandra East, Mumbai – 400 051.
2. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.