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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 380/27/B/WZ/2017-RA(MUM) / 6<sup>dsq</sup>: Date of Issue 25/11/2022

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ORDER NO. <sup>343</sup> /2022-CUS (WZ)/ASRA/MUMBAI DATED <sup>24</sup> .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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Applicant : Commissioner of Customs, Pune : 411 001.

Respondent : Shri. Thalangara Mahim Mohamed Iqbal

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
PUN-EXCUS-001-APP-056-17-18 dated 11.05.2017 [F.No.  
V2P1/485/Cus/2015] passed by the Commissioner  
(Appeals), Central Excise, Pune-I.

**ORDER**

This revision application has been filed by the Commissioner of Customs, Pune - 411 001 (herein referred to as the Applicant) against the Order in Appeal No. PUN-EXCUS-001-APP-056-17-18 dated 11.05.2017 [F.No. V2P1/485/Cus/2015] passed by the Commissioner of Customs (Appeals), Central Excise, Pune-I in respect of Shri. Thalagara Mahim Mohamed Iqbal (hereinafter referred to as the Respondent).

2. Briefly stated the facts of the case are that the Respondent on his arrival at Pune International Airport from Dubai onboard AI Express Flight no. IX-212 was intercepted on 15.11.2014 by Customs Officers when he attempted to clear himself through the green channel after having filed a 'Nil' Customs declaration form. A screening of the corrugated box belonging to the Respondent was carried out which indicated a black rectangular area at the bottom of the box. The Respondent was queried about the same. However, he denied any concealment of gold at the bottom of the box. The examination of the corrugated box led to the recovery of two flattened gold plates totally weighing 466.600 grams having a value of Rs. 12,15,960/-. These two plates had been placed in a specially created perforation at the bottom of the corrugated box and the two plates of gold which had been wrapped in blue coloured paper were kept hidden in it. The two gold plates were seized under the reasonable belief that the same were being attempted to be smuggled into India with an intention to evade Customs duty in contraventions of the provisions of the Customs Act, 1962.

3. The Original Adjudicating Authority i.e. Addl. Commissioner of Customs, Pune vide Order-In-Original No. PUN-CUSTM-000-ADC-17/15-16 dated 30.10.2015 ordered for the absolute confiscation of the impugned two flattened plates of gold totally weighing 466.600 grams and valued at Rs. 12,15,960/- under Section 111 (d), Section 111 (l) & Section 111 (m) of the Customs Act, 1962

and imposed a penalty of Rs. 2,00,000/- ( Rupees Two lakhs only ) under Section 112 of the Customs Act, 1962 on the Respondent. Further a penalty of Rs. 1,00,000/- (Rupees One Lakh only) under Section 114AA of the Customs Act, 1962 was also imposed on the Respondent.

4. Aggrieved by the said order, the Respondent filed an appeal before the appellate authority i.e. Commissioner (Appeals), Central Excise, Pune - I who vide Order-In-Appeal No. PUN-EXCUS-001-APP-056-17-18 dated 11.05.2017 [F.No. V2P1/485/Cus/2015] allowed the release of the impugned gold on payment of redemption fine of Rs. 3,00,000/- under Section 125(1) of the Customs Act, 1962 alongwith payment of appropriate duty. However, the penalties imposed by the Original Adjudicating Authority under Section 112 and Section 114AA of the Customs Act, 1962 were confirmed by the appellate authority.

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

5.1. The order-in-appeal filed by the appellate authority was not legal, just and proper.

5.2 that the Respondent had not filed a declaration as required under Section 77 of the Customs Act, 1962.

5.3 by the act of concealment, the mensrea of the Respondent was established which had not been considered by the appellate authority.

5.4 the appellate authority had erred in interpreting Section 125 of the Customs Act, 1962 which should be interpreted harmoniously with the relevant sections such as Section 2(33), 2(39), 11(2)(c), 11(2)(e), 11(2)(f), 11A(a), 77, 78, 79, 108, 111(d), 111(i), 111(j), 111(l), 111(m), 123 of the Customs Act, 1962 readwith the Baggage Rules, 1998, Foreign Trade Regulations, notifications etc.

5.6 the applicant has cited certain case laws to buttress their case for absolute confiscation. .

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to set aside the order passed by the appellate authority and have requested to restore the order-in-original passed by the Original Adjudicating Authority or to pass any other order as deemed fit.

6. Personal hearings in the case was scheduled for 07.11.2019, 21.11.2019. After the change of the Revisionary Authority, the personal hearing through the online video conferencing mode were scheduled for 16.09.2021, 23.09.2021, 26.10.2021, 09.11.2021 and 02.12.2021. None appeared for the applicant and also for the respondent. It is seen that sufficient opportunities of personal hearings have been accorded and both, the applicant as well as the respondent have failed to avail of the same. In the given circumstances, the case is being taken up for a decision on the basis of the evidence available on the records

7. The applicant has filed for condonation of delay of about 2 days, attributing the same to postal delay as they had been dispatched to the Revisionary Authority at Delhi. The Government notes that the revision application has been filed by the Applicant within the extension / condonable period i.e. (3 months + 3 months). In view of the same, the Government accepts the plea made by the Applicant and condones the delay.

8. At the outset, the Government notes that the Respondent had brought the gold in the form of plates which were wrapped in blue paper and concealed at the bottom of the corrugated box. The Respondent had created a perforation at the bottom of the corrugated box to hide the gold plates and evade payment of Customs Duty. But for the alertness of the Customs Officers manning the airport, the Respondent had almost succeeded in smuggling the impugned gold. Also, the Respondent had filed a 'Nil' Customs declaration form for possession of any dutiable goods and upon being queried had replied in the negative for possession of any dutiable goods. A declaration as required under Section 77 of the Customs Act, 1962 had not been submitted and therefore, the confiscation of the gold is justified.

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 Respondent 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. The quantity of gold under import is small and is not of commercial quantity. The gold had been melted and converted into two plates and were kept hidden in the corrugated box. There are no allegations that the respondent is a habitual offender and was involved in similar offence earlier. 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. Government notes that the appellate authority has rightly allowed to redeem the gold on payment of a redemption fine and had made judicious use of discretion available under Section 125 of the Customs Act, 1962. The Government notes that considering the duty rate, quantum of redemption fine and penalty, the respondent has to pay more than 75% of the value of the goods and as such there cannot be any bonanza to the respondent. Government finds that the Appellate Order is proper and judicious and is not inclined to interfere in the same.

13. The Government finds that the penalty of Rs. 2,00,000/- imposed on the respondent under Section 112 of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed and does not find it necessary to interfere in the same.

14. Government finds that once penalty has been imposed under Section 112 of the Customs Act, 1962, there is no necessity of imposing penalty under Section 114AA of the Customs Act, 1962. The penalty of Rs. 1,00,000/- (Rupees One Lakh only) imposed under Section 114AA of the Customs Act, 1962 is set aside.

15. In view of the above, the Government except for setting aside the penalty imposed under Section 114AA of the Customs Act, 1962, does not find it necessary to interfere in the OIA passed by the AA.

16. Revision Application is decided on above terms.

  
( SHRAWAN KUMAR )

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

ORDER No. 343 /2022-CUS (WZ) /ASRA/MUMBAI DATED 24.11.2022

To,

1. Commissioner of Customs, ICE House, 41/A, Sasson Road, Pune : 411 001.
2. Shri. Thalagara Mahim Mohamed Iqbal, House No. XXIII / 426, Chengala Grama Panchayat, Shanamil Mahal, Eruthumkadavu, P.O. Muttathody, Kasargod Dist., Kerala State, Pin : 671 123.

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