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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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Mumbai-400 005

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F.No. 371/92/B/2019-RA / 1406 : Date of Issue: 15.03.2023

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ORDER NO. 347/2023-CUS (WZ)/ASRA/MUMBAI DATED 13.03.2023 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. Mohammed Aslam Abdul Rahiman

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

Subject : Revision Application filed under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal MUM-CUSTM-PAX-APP-1037/18-19 dated 24.01.2019 [Date of issue: 28.01.2019 [F.No. S/49-353/2016-17 AP] passed by the Commissioner of Customs (Appeals), Mumbai Zone -III.

ORDER

The Revision Application has been filed by Shri. Mohammed Aslam Abdul Rahiman (herein after referred to as the "Applicant") against the Order in Appeal No. CUSTM-PAX-APP-1037/18-19 dated 24.01.2019 [Date of issue: 28.01.2019 [F.No. S/49-353/2016-17 AP] passed by the Commissioner of Customs (Appeals), Mumbai Zone-III.

2.1. Briefly stated the facts of the case are that on 19.10.2014, on specific intelligence, the officers of Mumbai Zonal Unit of Directorate of Revenue Intelligence intercepted the Applicant, who had arrived from Dubai on board Qatar Airways Flight No QR-556, after he had cleared himself through the Customs green channel. The Applicant was asked whether he was carrying any contraband goods that was not declared before Customs, to which he replied in the negative. Detailed examination of the trolley bag of the Applicant led to the recovery of two brown coloured mobile carrying cases. On further examination, each carrying case was found to contain two gold bars of one kilo each and two smaller gold bars of 10 tolas each, having foreign markings. Each one kilo bars had the marking of "Al Etihad Dubai UAE" "MELTER ASSAYER 995.0" and the following serial numbers on the obverse side D 106430, D 106433, D 103434 and D106435 respectively. The two bars of 10 tolas each bore the markings "AL ETIHAD DUBAI UAE" "10 TOLA" "999.0". As the gold bars with foreign marking were not declared by the Applicant before Customs, the four gold bars of 01 kg each and two gold bars of 10 tolas each, totally weighing 4.467 kgs and valued to Rs. 1,11,14,812/- were seized under the reasonable belief that the same were liable to confiscation under the provision of the Customs Act, 1962. The two mobile carrying cases that were used for concealing and carrying the gold bars were also seized.

2.2. Scrutiny of the passport of the Applicant revealed that the Applicant was a frequent traveller. The Applicant in his statement admitted that an agent named Mustafa asked him to smuggle four kilos of gold for a monetary consideration an airfare for the trip. The Applicant also admitted that a staff working inside the CSI Airport would call him on landing at Mumbai and that the carrying case was to be handed over to the person from Celibas when he was in transit from the aircraft to the airport terminal. He also admitted that in the event of not meeting the person, he was instructed to throw the gold bars in the dustbin of the bathroom and in case he was caught, he was instructed to handover the gold to the authorities. As the accomplice did not turn up, he decided to try his luck by walking through the Green channel but he was intercepted by the Officers.

3. Following investigations and following the due process of law, the Original Adjudicating Authority i.e. Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-In-Original No. ADC/RR/ADJN/079/2016-17 dated 03.06.2016 [S/14-5-20/2015-16 Adjn - DRI/MZU/C/Int-135/2014-15] ordered the absolute confiscation of the impugned gold collectively weighing 4.467 kilograms, valued at Rs. 1,11,14,812/- under Section 111(d),(j) (l) and (m) of the Customs Act, 1962 and penalty of Rs. 10,00,000/-was imposed on the Applicant under section 112 (a) and 114 of the Customs Act, 1962.

4. Aggrieved by the said order, the Applicant filed an appeal before the Appellate Authority i.e Commissioner of Customs (Appeals), Mumbai Zone- III who vide Order in appeal No. CUSTM-PAX-APP-1037/18-19 dated 24.01.2019 [Date of issue: 28.01.2019 [F.No. S/49-353/2016-17 AP] rejected the Appeal.

5. Aggrieved with the above order, the Applicant has filed this revision applications interalia on the grounds that;

5.01. That the impugned order has been passed without giving due consideration to the documents on record

5.02. That the dutiable goods brought by the Applicant are neither prohibited or restricted;

5.03. That the Applicant had no previous cases and this was the first time that he had brought the goods;

5.04. That once the department accepts that the goods are dutiable, the option of redemption of goods as provided under Section 125 will have to be given to the Applicant;

5.05. That redemption of dutiable goods on payment of fine in lieu of confiscations which is what the legislature in its collective wisdom has proposed vide sub section (1) of Section 125 of Customs Act, 1962;

5.06. The Applicant has relied upon the following cases in support of their contention that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered

- (i) Hargovind Das K. Joshi vs Collector of customs [1992 (61) ELT 172(SC)
- (ii) Alfred Menezes vs CC, Mumbai [2011(236) E.L.T. 587(Tri-Mum)
- (iii) T. Elavarasan Vs Commissioner of Customs (Airport), Chennai [2011 (266) ELT 167 (Mad)]
- (iv) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mumbai]
- (v) Mohini Bhatia vs CC, Mumbai [1999(106)(E.L.T. (Tri-Mum)]
- (vi) Shaikh Jamal Basha vs. Government of India - [1992 (91) ELT 227(AP)]
- (vii) Gauri Enterprises vs CC Pune [2002(145) E.L.T. 706(Tri-Bang)]
- (viii) Universal Traders vs. Commissioner [2009 (240) E.L.T. A78 (S.C.)]
- (ix) Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]
- (x) VP Hameed vs. Collector of Customs Mumbai [1994(73) ELT 425 (Tri)]
- (xi) P. Sinnasamy vs. CC, Chennai [2007(220) E.L.T. 308 (Tri-Chennai)]
- (xii) Union of India vs. Dhanak M. Ramji [2009 (248) E.L.T. 127 (Bom.)]

- (xiii) A. Rajkumari vs CC, Chennai [2015 (321) E.L.T 540(Tri Chennai)]
- (xiv) Kadar Mydin vs. Commnissioner of Customs (Preventive), West Bengal [2011 (136) ELT 758]
- (xv) Sapna Sanjeeva Kolhi v/s Commissioner of Customs, Airport, Mumbai [2008(230)E.L.T. 305]
- (xvi) Vatakkal Moosa vs. Collector of Customs, Cochin [1994 (72) ELT (G.O.I)]
- (xvii) Halithu Ibrahim vs. CC [2002-TIOL 195 CESTAT-MAD]
- (xviii) Krishnakumari vs. CC, Chennai [2008 (229) ELT 222 (Tri Chennai)]
- (xix) S.Rajagopal vs. CC, Trichy [2007 (219) ELT 435 (Tri-Chennai)]
- (xx) M. Arumugam vs. CC, Trichirapalli [2007 (220) ELT 311 (Tri-Chennai)]
- (xxi) CCEx, Lucknow vs. Mohd. Halim Mohd Shamim Khan [Final Order No A/71054/2017-SM(BR) [2018(359) E.L.T. 265(Tri-All)]

Under the circumstances, the Applicant prayed that the goods be released under Section 125 of the Customs Act, 1962 on nominal redemption fine alongwith applicable duty and personal penalty be reduced substantially.

6. Personal hearing in the case was scheduled for 29.12.2022 or 06.01.2023. Shri N.J.Heera, Advocate appeared for the hearing on 06.01.2023, on behalf of the Applicant. He reiterated his earlier submissions and further submitted that the Applicant is a NRI and usually stays in UAE. He also submitted that the Applicant is an eligible passenger to bring gold and that the Applicant was intercepted at aerobridge and was not allowed to go to the counter to declare the gold and this aspect has not been discussed either by the Original or Appellate Authority. He reiterated the fact that invoice of purchase was available with the Applicant which was not taken on record.

7. The Government has gone through the facts of the case and notes that the Applicant was carrying a very large quantity of gold in form of bars in his trolley bag, concealed in two mobile carrying cases and had not declared the

same to the Customs. Even after interception, when the Applicant was asked about the possession of any gold or contraband he had replied in the negative. The Applicant had not declared the huge quantity of gold in his possession in the Customs declaration form and had thus clearly failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. The contention of the Applicant that he was intercepted at the aerobridge is contrary to the facts on record. The Applicant had cleverly and innovatively concealed the huge quantity of gold in the mobile carrying cases kept in the trolley bag which reveals his mindset to smuggle the goods and evade the duty. The quantum of gold and the manner of attempting to smuggle indicates that the same was for commercial use. The Applicant's admission that the gold was attempted to be smuggled for monetary considerations and that the gold had been given to him by an accomplice in Abu Dhabi and the Applicant was to hand it over to a staff working inside CSI Airport employee of Celebinas when he was in transit from the aircraft to the airport terminal, brings out that the Applicant was part of a syndicate as a carrier. Besides, the Applicant was also instructed about what was to be done if he did not locate the person to who he was to handover the gold or if he was caught by the Customs Authorities. Applicant and his handlers had meticulously pre-planned to use the services of an employee of the CSI Airport who apparently had unhindered access to the aircraft and the precincts of the Customs area of the airport and had adopted a clever method to smuggle the gold and avoid payment of Customs duty. Had it not been for the alertness exhibited by the Customs, the Applicant in cahoots with his accomplices would have been successful in smuggling out the gold and evading Customs duty. This method used by the Applicant can be termed well planned and ingenious, as he had successfully passed through the security of the overseas departing airport and also the security at the arrival airport. It also reveals that the act committed by the Applicant was conscious and pre-meditated. The Applicant did not intend to

declare the gold in his possession to Customs. The Government finds that the confiscation of the gold is therefore justified and the Applicant had rendered himself liable for penalty for his omissions and commissions.

8. Government observes that 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.), 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.

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 Applicant thus, is 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. Government observes that the quantum of gold was very large, of commercial quantity and it was cleverly, consciously and premeditatedly concealed and meticulous planning was involved in attempting to smuggle the gold. The Applicant, a habitual offender, was a carrier and the gold was being smuggled by him for monetary consideration, on the instruction of his handlers. It revealed his clear intention to evade duty and smuggle the gold into India, in cahoots with his accomplices. The circumstances of the case especially that it is of huge commercial quantity and was cleverly concealed, clearly brings out that the Applicant had no intention of declaring the gold to the Customs at the airport. All these facts have been properly considered by the Original Adjudicating Authority while absolutely confiscating the gold bars weighing



4.467 kgs and by the Appellate Authority while dealing with the appeal filed by the Applicant.

12. The Appellate Authority at para 6 and 7 (typo error shows it as 8) of the impugned Order-in-Appeal has stated as under:

*"6. In present case after considering all the facts and submissions of the case, I find that there is deliberate act of violation by the passenger by not making mandatory declaration in terms of Section 77 of Customs Act, 1962 and also contravened Para 2.20 of Foreign Trade Policy read with Baggage Rules, 1998 which has duly been analyzed and included in the findings of adjudicating authority. I find that the appellant had failed to produce any material in favor of his claim of ownership like purchase invoice, bank statement etc. No explanation has been offered as to how the finances were arranged to buy the gold. A passenger found in possession of gold in bullion form worth of Rs. 1,11,14,812/- in his/her purpose & intention cannot be other than avoidance of payment of duty and legal obligations laid down for import of gold in India under Customs Act, 1962 and any other law for the time being in force.*

*8. In such circumstances, I find that the adjudicating authority has rightly confiscated the seized gold absolutely and redemption in such circumstances cannot be claimed as a right. A carrier bringing gold in such a huge quantity facilitating smuggling for others for monetary consideration who is a frequent traveller which further suggest his complicity as a member of organized smuggling racket, cannot claim redemption as a matter of right."*

13. The main issue in the case is the manner in which the impugned gold was being brought into the Country. The option to allow redemption of the seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and the discretion to release the gold is based on various factors such as methodology of smuggling, manner of concealment, quantity, attempt of smuggling as part of a syndicate etc and after examining the merits. In the present case, the quantum of the gold bars, manner of concealment and meticulous planning involved, is a clear attempt to smuggle the gold bars totally weighing 4.467 Kgs, it is a fit case for absolute confiscation which would act as a deterrent to such offenders. Thus, taking into account the facts on record and the serious and grave and novel and modus operandi, the Original Adjudicating Authority had rightly ordered and the Appellate Authority

has rightly echoed the absolute confiscation of the impugned gold bars. But for the intuition and the diligence of the Officers, the gold would have passed undetected. The redemption of the gold will encourage such concealment as, if the gold is not detected by the Custom authorities, the passenger gets away with smuggling and if not, he has the option of redeeming the gold. 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. Government thus concurs with the findings of the lower authorities and holds that the absolute confiscation of the gold is in order and the order of the Appellate authority upholding the order of the adjudicating authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

14. The Applicant has relied on several judgements to buttress his case and further his designs. These judgements have either been given in different set of facts or the ratios of the same have been selectively and obliquely applied to. The judgements mentioned above are appropriate to both the subjects of treating gold in the baggage and once goods are held to be prohibited, the circumstances and factors to be considered for allowing redemption of the same.

15. As regards the imposition of penalty on the Applicant, the entire chain of events has been unearthed by investigations and the act of smuggling has been confirmed by way of confessional statement of the Applicant and thus the imposition of penalty of Rs. 10,00,000/- for the act of smuggling is justified as held by the Appellate Authority.

16. Government thus notes that the penalty of Rs. 10,00,000/- imposed on the Applicant under Section 112 (a) and (b) of the Customs Act, 1962 by the Original Adjudicating Authority is commensurate with the omissions and

commissions committed and Government is not inclined to interfere with the same.

17. In view of the above, the Government upholds the Order-in-Appeal No. CUSTM-PAX-APP-1037/18-19 dated 24.01.2019 [Date of issue: 28.01.2019 [F.No. S/49-353/2016-17 AP] passed by Appellate Authority i.e. the Commissioner of Customs (Appeals), Mumbai Zone-III and is not inclined to interfere with the same.

18. The Revision Application is dismissed.

*Shrawan*  
*13/3/23*  
( SHRAWAN KUMAR )

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

ORDER No. 317/2023-CUS (WZ) /ASRA/

DATED 3.03.2023

To,

1. Mr Mohamed Aslam Abdul Rahiman, Moosa A.K. House, Jadeed Road, Thalangara Post, Kasargod, Kerala 671 122  
**Address No 2:** Mr Mohamed Aslam Abdul Rahiman, c/o Shri N.J Heera, Nulwala Building, 41, Mint Road, opp G.P.O, Fort, Mumbai 400 001.
2. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai - 400 099.
3. The Commissioner of Customs (Appeals), Mumbai-III, 5<sup>th</sup> Floor, Avas Corporate Point, Makwana Lane, Behind S.M.Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059

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