

REGISTERED  
SPEED POST

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

F.No. 371/211/B/WZ/2020-RA/8110 : Date of Issue : 02/12/2022

ORDER NO. 352/2022-CUS (WZ)/ASRA/MUMBAI DATED 30.11.2022 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.

Applicants : Mr. Meiraj Mahiuddin Ahmed

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

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-184/20-21 dated 14.07.2020 [F.No. S/49-364/2019] [Date of issue: 07.08.2020] passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

The Revision Applications has been filed by Mr. Meiraj Mohiuddin Ahmed (herein referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-184/20-21 dated 14.07.2020 [F.No. S/49-364/2019] [Date of issue: 07.08.2020] passed by the Commissioner of Customs (Appeals), Mumbai-III.

2.1. Brief facts of the case are that on 15.11.2018, the applicant was intercepted by the CISF staff while he was departing to Hyderabad by Jet Airways Flight No 9W 457 dated 26.05.2018. The applicant had earlier arrived from Bahrain by Jet Airways Flight No 9W 591 dated 26.05.2018, and had cleared himself through the green channel without declaring anything to Customs and checked in three baggage at the Jet Airline counter for his onward journey to Hyderabad.

2.2. The CISF staff recovered 04 cut pieces of gold of 24 KTS, weighing 435 grams concealed in his hand luggage. The officers of Customs took over and seized the 4 pieces of gold of 24 KTS, weighing 435 grams and valued at Rs. 12,69,167/-, under the reasonable belief that the same were attempted to be smuggled into India in contravention of the provisions of the Customs Act, 1962.

3. The Original Adjudicating Authority (OAA) i.e. Additional Commissioner of Customs, C.S.I. Airport, Mumbai vide his Order-In-Original (OIO) No. ADC/AK/ADJN/474/2018-19 dated 26.02.2019 [(DOI : 28.02.2019) (S/14-5-228/2018-19/Adjn SD/INT/AIU/239/2018 AP 'D')] ordered for the confiscation of the impugned 04 gold pieces weighing 435 grams valued at Rs. 12,69,167/- under Section 111 (d), (l) & (m) of the Customs Act, 1962. A penalty of Rs. 1,40,000/- was imposed on the applicant under Section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved, with the order of the OAA, the applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai-III, who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-184/20-21 dated 14.07.2020 upheld the order passed by the OAA.

5. Aggrieved with the above order of the Appellate Authority, the applicant has filed this revision application on the following grounds;

5.01. that the impugned order is illegal, improper, arbitrary and incorrect and the same deserves to be set aside.

5.02. that the applicant was not issued with a show cause notice under Section 124 of the Customs Act, 1962 and therefore the impugned OIO is not sustainable and the goods under confiscation are liable to be redeemed unconditionally. The applicant has relied on the following case laws in support of his contention:

- (i) Asstt. Collector of Customs vs. Charan Das Malhotra [AIR1972SC 689]
- (ii) J.K.Bardolia Mills vs. Dy. Collector [1994(5) SCC 332]
- (iii) Krampehydraulik (India) vs. UOI [2003971) DRJ 353]
- (iv) Baru Ram vs. Parsanni [AIR 1959 SC 93]
- (v) UOI vs Hanil Era Textiles [Civil Appeal No 8966 dated 03.10.2013]
- (vi) Mohan Lal Devdan Bhai vs. H.P Mondkar [AIR 1977Bombay 320]

5.03. That gold is not a 'prohibited goods' but only 'restricted goods' and when gold is not declared to avoid payment of duty, the option of redemption under section 125 of the Customs Act, 1962 can be exercised to secure the ends of justice. The applicant has relied on the following case laws in support of his contention:

- (i) Yakub Ibrahim Yusuf vs. CC, Mumbai 2011 (263) E.L.T. 685 (Tri. Mum)]
- (ii) Neyveli Lignite Corp Ltd vs UOI [2009 (242) E.L.T. 487 (Mad.),
- (iii) Hargovind Das Joshi vs. Collector of Customs [1992 (61) ELT 172(SC)]
- (iv) Universal Traders vs. Commissioner [2009 (240) E.L.T. A78 (SC)
- (v) Gauri Enterprises vs CC, Pune [2002(145) E.L.T. (705) (Tri Bangalore)
- (vi) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (vii) Shaikh Jamal Basha vs. GOI [1997 (91) ELT 277(AP)]
- (viii) V.P Hameed vs. Collector of Customs Mum [1994(73) ELT 425 (Tri)
- (ix) T. Elavarasan vs. Commr. of Customs (Air), Chennai [2011 (266) ELT 167 (Mad)]
- (x) Kadar Mydin vs. Commr. of Customs (Prev), West Bengal [2011 (136) ELT 758]
- (xi) Sapna Sanjeeva Kolhi vs. Commissioner of Customs, Airport, Mumbai [2010 (253) E.L.T.A52 (SC)]

- (xii) Vatakkal Moosa vs. collector of Customs, Cochin [1994 (72) ELT (G.O.I)]
- (xiii) Halithu Ibrahim vs. CC [2002-TIOL 195 CESTAT-MAD.]
- (xiv) Krishnakumari vs. CC, Chennai [2008 (229) ELT 222 (Tri Chennai)]
- (xv) S.Rajagopal vs. CC, Trichy [2007 (219) ELT 435 (Tri-Chennai)]
- (xvi) M. Arumugam vs. CC, Trichirapalli [2007 (220) ELT 311 (Tri-Chennai)]
- (xvii) Union of India vs. Dhanak M. Ramji [2009 (248) E.L.T. 127 (Bom.)]
- (xvii) Peringatil Hamza vs. CC (Airport), Mumbai [2014 (309) ELT 259 (Tri Mumbai)]
- (xix) R. Mohandas vs. CC, Cochin [2016 (336) ELT 399 (Ker)]

5.04. that the re-shipment of the impugned gold may be allowed as Section 125 of Customs Act, 1962 provides that in case of prohibited goods, the adjudicating authority may give an option of redemption and in this way he has discretionary power but for other than prohibited goods the adjudicating authority has to give option to pay fine in lieu of confiscation and in this way the adjudicating authority shall allow redemption to the owner or to the person from whose possession such goods have been seized. The applicant has relied on the following case laws in support of his contention:

- (i) Siemens Ltd vs. CC [1999(113) E.L.T. 776(SC)]
- (ii) HCL Hewlett Packard Ltd [1997(92) E.L.T. 367(T)]
- (iii) Padia Sales Corpn vs. CC [1992(61) E.L.T. 90]
- (iv) Skantrons (P) Ltd [1994(70) E.L.T. 635]
- (v) G.V.International [2000 (39) R.L.T 272]
- (vi) Commr. of Customs, Calcutta vs. J.B.(P) Ltd [2000(39) E.L.T. 1074]
- (vii) Mukadam Rafique Ahmed [2011(270) E.L.T. 447 (GOI)]
- (viii) Liaquat Ali Hameed vs. Commr. of Customs [2003 ECR 49 Tri Chennai]
- (ix) Chinnakaruppan P vs. Commr. of Customs [2007(207) E.L.T. 138 (Tri Chennai)]
- (x) Nand Kishore Somani vs. Commr of Customs- (HC Calcutta order dated 25.04.2011)
- (xi) Mohini Bhatia vs. Commr. of Customs [1999(106) E.L.T 485 (Tri Mum)]
- (xii) Hemantbhai R. Patel vs. Commr. of Customs [2003(153) E.L.T 226(Tri. Del)]

5.05. That the case was a solitary incident of alleged act of smuggling of goods and cannot be a justifiable ground for confiscation of the gold under Section 111 of the Customs Act, 1962 and that the act of the applicant cannot be termed as an organized crime activity and he was not a habitual offender.

Under the circumstances, the applicant prayed to set aside the Order-in-Appeal and prayed for a reasonable order for redemption of the gold under absolute confiscation on payment of reasonable fine for re-export and drop further proceedings.

6. Personal hearing in the case was scheduled for 23.08.2022. Shri Prakash Shingrani, Advocate appeared for the personal hearing on behalf of the applicant and submitted that quantity of gold is not commercial, there was no concealment and the applicant was not a habitual offender. He requested to release the gold on nominal redemption fine and penalty.

7. The Government has gone through the facts of the case, and observes that the applicant had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962 and had not disclosed that he was carrying dutiable goods. However, pursuant to recovery of the gold bars by the CISF staff from his baggage after he had cleared through the green channel and was intercepted by the CISF staff during security proceedings in the domestic departure area enroute to Hyderabad, it came to light that the applicant had not declared the same to Customs and clearly revealed his intention not to declare the gold and thereby evade payment of Customs Duty.

8.1. The relevant sections of the Customs Act are reproduced below :

**Section 2(33)**

“prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with”

**Section 125**

*“Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited*

*under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :*

*Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :*

*Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.*

*(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.”*

8.2. It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only by the banks authorized by the RBI or by others authorized by DGFT and to some extent by passengers. Therefore, gold which is a restricted item for import but which was imported without fulfilling the conditions for import becomes a prohibited goods in terms of Section 2(33) and hence it liable for confiscation under Section 111(d) of the Customs Act. It is evident that Section (l) and (m) are also applicable in this case as the gold was recovered from his baggage on the domestic leg of his journey after he had arrived from Bahrain and after he had cleared himself through the Green channel and had not declared the gold. Therefore, the gold was also liable for confiscation under these Sections.

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. 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 notes that a case has not been made out that the applicant had ingenuously concealed the gold. Government notes that the quantity of gold under import is small and not of commercial quantity. Though it is claimed that the applicant was a frequent flyer, there are no allegations that the Applicant is a habitual offender and was involved in similar offences earlier. The applicant has claimed that he had got the gold to earn a profit for the medical treatment of his son. 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 Customs Act, 1962 and while imposing quantum of penalty.

13. Government finds that this is a case of non-declaration of gold. The absolute confiscation of the 04 pieces of gold, leading to dispossession of the applicant of the gold in the instant case is therefore harsh and not reasonable. Government considers granting an option to the applicant to redeem the gold on payment of a suitable redemption fine, as the same would be more reasonable and fair.



14.1. Government further observes that there are a catena of judgements, over a period of time, of the Hon'ble Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

- a) In the case of Commissioner of Customs, Aliganj, Lucknow vs. Rajesh Jhamatmal Bhat, [2022(382) E.L.T. 345 (All)], the Lucknow Bench of the Hon'ble High Court of Allahabad, has held at Para 22 that "*Customs Excise & Service Tax Appellate Tribunal Allahabad has not committed any error in upholding the order dated 27.08.2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act.*"
- b) The Hon'ble High Court of Judicature at Madras, in the judgment in the case of Shik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad)] upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.
- c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T, 399 (Ker.)] has, observed at Para 8 that "*The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any such person from whom such custody has been seized...*"
- d) Also, in the case of Union of India vs Dhanak M Ramji [2010(252)E.L.T. A102(S.C)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passenger.

14.2. Government, observing the ratios of the above judicial pronouncements, arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case.

15. Applicant has also pleaded for reduction of the penalty imposed on him. The value of the gold in this case is Rs. 12,69,167/-. From the facts of the case as discussed above, Government finds that the penalty of Rs. 1,40,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate to the omissions and commissions of the applicant.

16. In view of the above, the Government modifies the impugned order of the Appellate Authority in respect of the gold beads seized from the applicant. The 04 gold pieces weighing 435 grams valued at Rs. 12,69,167/- is allowed to be redeemed on payment of a fine of Rs. 2,30,000/- (Rupees Two Lakh Thirty Thousand only). The penalty of Rs. 1,40,000/- imposed under Section 112(a) and (b) of the Customs Act, 1962 being appropriate and commensurate with the omissions and commissions of the applicant, Government does not feel it necessary to interfere with the imposition of the same.

17. Revision Application is disposed of on the above terms.

*Shrawan*  
20/11/22

( SHRAWAN KUMAR )

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

ORDER NO. 352/2022-CUS (WZ)/ASRA/MUMBAI DATED 30.11.2022

To,

1. Mr. Meiraj Mohiuddin Ahmed, House No 2-6-1041, Choti Masjid, KLNR Colony, Subedari, Hanamkonda, Distt. Warangal, Telangana-506 001  
**Address No 2:** C/o Mr Prakash Shingrani, Advocate, 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai 400 099
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, Awas Corporate Point, Makwana Lane, Behind S.M.Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy to:

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