

REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 373/397/B/2019 / 2131

Date of Issue ~~11-2022~~

02/12/2022

ORDER NO. 38/2022-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.

Applicant : Mr Gokhan Demir

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-CUSTM-PAX-APP/210/19-20 [/49-246/2018/AP] dated 20.02.2015 passed by the Commissioner of Customs (Appeals), Mumbai-III.

ORDER

This Revision Application has been filed by Gokhan Demir (herein referred to as "applicant") against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP/210/19-20 [S/49-246/2018/AP] dated 20.06.2019 [Date of issue: 27.06.2019] passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. The applicant, a Turkish passport holder, who had arrived from Istanbul by Turkish Airlines Flight No TK-720 on 25.02.2017, was intercepted by the officer of Customs at the Chattrapati Shivaji International (CSI), Mumbai, near the exit gate after he had cleared himself through the Green Channel. The personal search of the applicant resulted in the recovery of three foreign marked gold bars of 1000 grams each, which were found to be concealed in one olive green coloured cloth belt having three pouches stitched to it and worn by the applicant around his waist. The three gold bars of 1000 grams each of 23.86 karats (995.0%), purity totally weighing 3000 grams valued at Rs. 81,01,290/- (Rupees Eighty One Lakhs One Thousand Two Hundred and Ninety only) were seized.

3. The Original Adjudicating Authority (OAA) vide Order-In-Original No. ADC/AK/ADJN/224/2017-18 [S/14-5-50/2017-18Adjn SD/INT/AIU/47/2017 AP 'A'] dated 30.03.2018 ordered absolute confiscation of the gold under Section 111 (d), (l) and (m) of the Customs Act, 1962, and imposed penalty of Rs. 10,00,000/- (Rupees Ten lakhs only) on the Applicant under Section 112(a) and (b) of the Customs Act, 1962

4. Aggrieved by this order the applicant filed an appeal with the Commissioner of Customs (Appeals), Mumbai -III (AA) pleading for release of the gold on redemption fine and to set aside the penalty. The AA) vide Order in

Appeal No. MUM-CUSTOM-PAX-APP/210/19-20 [S/49-246/2018/AP] dated 20.06.2019 [Date of issue: 27.06.2019] rejected the appeal.

5. Aggrieved with the order of the Appellate Authority, the applicant has filed this revision application inter alia on the grounds:

5.01. that while interpreting a fiscal legislation, what has to be kept in mind by the revisional authorities is the scheme of each and every legislation to levy and collect tax in accordance with the provision of the Act. This task is entrusted to the revenue. The revenue is levying tax lawfully payable by a person. Certainly revisional authorities owe a duty to review such orders and facilitate levy and collection of tax which are legitimately due to the Department Release of confiscated goods on payment of fine and penalty is such category which cannot be considered as loss of revenue to the exchequer. If at all it is considered as a loss to the Government exchequer, then there would not be a provision under the Customs Act, 1962 i.e Section 125 for release of the confiscated goods on payment of fine;

5.02. That as in criminal cases, discretion has been given to impose sentences having regard to circumstances of a case, in Administrative law, the principles of exercise of discretion to ensure that a particular action is consistent with Article 14 of the Constitution, have been laid down;

5.03. That the legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality;

5.04. That the applicant does not dispute the concealment and attempt to clear the impugned gold without declaring to Customs by opting green channel and that there was no dispute that he was the owner of the goods and no other person claimed ownership of the gold and there is nothing in the impugned O-i-O to suggest that he had acted as a carrier for somebody else for monetary consideration or he is a professional smuggler;

5.05. that it cannot be taken for granted that Adjudicating/Appellate Authorities will take different and diametrically opposite views on similar and identical cases brought on record before them;

5.06. That for substantiating the reasonability for not allowing redemption and re-export of the goods, the AA did not rely upon any decision of the higher Judicial forum and that two cases which are the same in relevant respects should be treated in the same way and it would be inconsistent to treat them differently;

5.07. That Section 125 of Customs Act provides that option of redemption can be given in case the seized goods are not prohibited and gold as such is not a prohibited item and can be imported and such import is subject to certain conditions and restrictions including the necessity to declare the goods on arrival at the Customs Station and make payment of duty at the rate prescribed. The applicant has relied upon the following case laws in support of their contention that confiscated gold can be redeemed on payment of redemption fine.

- (i) Shaikh Jamal Basha vs. Government of India – [1992 (91) ELT 227(AP)]
- (ii) Mohamed Ahmed Manu vs. Commr. of Customs, Chennai [2006 (205) ELT 383 (Tri-Chennai)]
- (iii) Mohd Zia Ul Haque vs. Addl Commr. of Customs, Hyderabad [2014 (214) ELT 849 (GOI)]

5.08. The applicant has relied upon the following case laws in support of the contention that when goods are not eligible for import as per the import policy, re-export of such goods is permitted on payment of penalty and redemption fine:

- i) CC vs. Elephanta Oil [2003(152) ELT 257 (SC)]
- ii) Collector vs. N Patel [1992 (62) ELT 674 (GO1)]
- iii) Kusumbhai Dahyabhai Patel vs. CC (P) [1995 (79) ELT 292 (CEGAT)]
- iv) K&K Gems vs. CC [1998(100) ELT 70 (CEGAT)]

5.09. the order of the Commissioner (Appeals), because his finding is based upon exclusion of some admissible evidence or consideration of some inadmissible evidence;

5.10. That in common law legal systems, 'precedent' is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts. And common-law legal systems place great value on deciding cases;

5.11. That in a common law system, judges are obliged to make their rulings as consistent as reasonably possible with previous judicial decisions on the same subject. Under the doctrine of stare decisis, a lower court must honour findings of law made by a higher courts. Simply put, it binds courts to follow legal precedents set by previous decisions;

5.12. That while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The applicant has relied upon the following case laws in support of their contention:

- (i) CCE, Calcutta vs. Alnoori Tobacco Products [2004(170) ELT 135 (SC)]

- (ii) Escorts Ltd vs. CCE, Delhi [2004 (173) ELT 113 (SC)].
- (iii) CC (Port), Chennai vs. Toyota Kirloskar [2007 (213) ELT 4 (SC)]
- (iv) E.I. Dupont India Private Limited vs. UOI – [2014 (5) TMI 128]
- (v) Clari's Life Sciences Limited vs. Union of India-[2014 (1) TMI 1467]
- (vi) Waman Rao vs. Union of India [(1981) 2 SCC 362]
- (vii) Manganese Ore (India) Ltd. vs. Regional Asstt, CST[(1976) 4 SCC 124]
- (viii) Ganga Sugar Corpn. vs. State of U.P. [(1980) 1 SCC 223]
- (ix) Union of India v. Raghubir Singh, [(1989) 2 SCC 754]
- (x) Krishena Kumar vs. Union of India, [(1990) 4 SCC 207]
- (xi) Union of India & Anr. vs. Paras Laminates (P) Ltd, [(1990) 4 SCC 453]
- (xii) Hari Singh vs. State of Haryana
- (xiii) SC judgement in Bombay Dyeing and Manufacturing Company Ltd. vs. Bombay Environmental Action Group
- (xiv) Islamic Academy of Education vs. State of Karnataka

5.13. That the Hon'ble Supreme Court in the case of Shanker Raju vs Union of India, has explained the legal concept of Stare Decisis. The doctrine pertains to the concept of being bound by one's earlier decision;

5.14. That in the instant case the Commissioner (Appeals) should have examined the judgements/decisions relied upon by the appellant, facts of the cases, legal issues involved in the cases, arguments raised and cases cited by the parties, legal reasoning that is relevant to resolve those issues, judicial opinions given by the Courts, ruling of the court on questions of law, the result of the case: the court's order, and which party was successful and the applicability of ratio of the said judgements in the case being dealt:

- (i) CIT vs. Sun Engineering Works (P) Ltd
- (ii) Madhav Rao Scindia vs. Union of India

5.15. That in terms of Section 125 of the Customs Act, re-export permission has been granted in many more cases by the Addl. Commissioner/Commissioner of Customs (Appeals), GOI and CESTAT:

- (i) Satuty Sharma - Order No. 2107, dated 13-2-2002
- (ii) Jasvinder Singh - Order No. MP (196) AIR/09
- (iii) Liaquat Ali Hameed v. CC Chennai – [2003 (156) E.L.T 863 (T)]
- (iv) GOI Order in the case of Mohd. Ramzan [1999 (75) E.L.T 207 (GOI)]
- (v) Revision Order No. 34/08, dated 24.04.2008 in the case of Pradeep Kumar, Bhavarpal [2003 (153) ELT 226 (Tri-LB.)]

5.16. That Gold is not 'prohibited goods', but only 'restricted goods'. Import of gold is no longer prohibited and therefore, it is the duty on the part of the adjudicating authority, if he is of the view that it is liable for confiscation, to permit its redemption on appropriate fine;

5.17. If any goods are restricted to import, the Government fixes some sort of barriers to import, which an importer has to overcome such barriers which means, certain procedures have to be completed to import such restricted products. If any import of goods adversely affects the health of human, animal, plants and other species, such goods are prohibited to import by the government of importing country. The restriction to import any goods is decided by the government under foreign trade policy amended time to time. That by importing the gold, the applicant has not contravened the provisions of Section 111(d) and Section 125 of the Customs Act, 1962 and cannot be considered as prohibition under FTP 2014-19;

5.18. That from various judgements of the Hon'ble Courts and other forums it transpires that in cases of gold brought by the passenger and not declared to avoid payment of duty, the option of redemption under section 125 of

Customs Act, 1962 can be exercised to secure ends of justice. The applicant has relied on the following case laws in support of their contention:

- (i) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011 (263) E.L.T. 685 (Tri. Mumbai)]
- (ii) In Neyveli Lignite Cor Ltd vs. UOI [2009 (242) E.L.T. 487 (Mad.)]
- (iii) Hargovind Das K. 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) ELT (705) (Tri Bangalore)]
- (vi) CC (Airport), Mumbai vs. Alfred Menezes [2009 (242) ELT 334 (Bom)]
- (vii) Shaik Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]
- (viii) VP Hameed vs. Collector of Customs Mumbai 1994(73) ELT 425 (Tri)
- (ix) T. Elavarasan Vs Commissioner of Customs (Airport), Chennai [2011 (266) ELT 167 (Mad)]
- (x) Kadar Mydin vs. Commissioner of Customs (Preventive), West Bengal [2011 (136) ELT 758]
- (xi) Sapna Sanjeeva Kolhi v/s Commissioner of Customs, Airport, Mumbai
- (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.)]
- (xviii) Peringatil Hamza vs CC (Airport), Mumbai [2014 (309) ELT 259 (Tri Mumbai)]
- (xix) R. Mohandas vs. CC, Cochin [2016 (336) ELT 399 (Ker)]

5.19. That it was a settled law that retracted statement without corroboration is a weak evidence against the maker as held in the following cases:

- (i) Haroon Haji Abdulla vs. State of Maharashtra [1999 (110) E.L.T. 309 (S.C.)]
- (ii) DRI vs. Mahendra Kumar Singhal [2016 (333) E.L.T. 250 Del]
- (iii) Rakesh Kapoor vs. Union of India 2015 (326) E.L.T. 465 (Del.)
- (iv) Sri Kumar Agency vs. CCE, Bangalore [2008 (232) E.L.T. 577 (S.C.)]
- (v) Escorts Ltd vs. CCE, Delhi-II [2004 (173) E.L.T. 113 (S.C.)]

- (vi) CCE, Calcutta vs. Alnoori Tobacco Products [2004 (170) E.L.T, 135 (S.C.)]

5.20. 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 their contention:

- (i) Kusumbhai Dahyabhai Patel vs CC (P), Ahmedabad [1995 (79) ELT 292]
- (ii) Hemant Bhai R. Patel vs. CC, Ahmedabad [2003 (153) ELT 226 (Tri-LB)]
- (iii) K.A. Mohamed Kunhi vs. CC (Appeals) [1992 (62) E.L.T. 669 (G.O.I.)]
- (iv) Groves Overseas Pvt. Ltd. Vs CC 1990 (46) E.L.T. 129 (Tribunal),
- (v) A.K. Jewellers vs. CC, Mumbai [2003 (155) ELT 585 (Tri LB)]
- (vi) KK Gems vs. CC, Mumbai-1 [1998 (100) ELT 70 (Tri)]
- (vii) Yakub I. Yusuf vs. CC, Mumbai [2001 (127) ELT 543 (Tri Mum)]
- (viii) Afzal Agency vs. CESTAT [2006 (205) ELT (Kar)
- (ix) Liaquat Ali Hameed, [2003 (156) E.L.T. 863 (Tri. Chennai), CESTAT]
- (x) CC vs. Mrs. Patel N. [1992 (62) ELT 674 (GOI)]
- (xi) Revision order no.392/2002 in case of Shri Nasir Asgar Mirab
- (xii) Revision order no.33/2008 in case of Shri Deepak Hiralal Parekh
- (xiii) Revision order no.34/2008 in case of Shri Pradeep Kumar Bhanwarlal
- (xiv) Revision order 0.38/2008 in case of Mrs. Majeeda Mohammed Yonus
- (xv) Revision order no,178/2008 in case of Mr. Ravinder Sandhuram Dulari
- (xvi) Revision order no. 198/2010 in case of Shri Mukadam Rafique Ahmad
- (xvii) Revision order no. 213/2013 in case of Mrs Sandhya Vinayak Kerkar
- (xviii) Revision order no. 226/2013 in case of Shri Ansar Ahmad Sheikh
- (xix) Rev. Order NO. 598-590/1994 in case of Mohd. Ramzan [1995 (75) KLT 207]

The gist of these judgements is that redemption of misdeclared goods can be allowed under Section 125 of the Customs Act, 1962, for re-export.

- (i) Rajendran Thangam vs. CC, Chennai [2011 (270) ELT 37 (Mad)]
- (ii) Kannan Karuppusamy vs. CC, Chennai [2011 (269) ELT 72 (Mad)]
- (iii) Dhanak Madhusudan Ramji vs. Commissioner of Customs (Airport), Mumbai [2009 (237) E.L.T. 280 (Tri. - Mumbai)]
- (iv) A. Pajkumari vs. Commr of Cus. (Airport Air Cargo), Chennai [2015 (321) ELT 540]
- (v) Commissioner vs. A. Rajkumari [2015 (321) ELT. A207 (S.C.)]
- (vi) Mohd, Zia Ul Haque before Government of India [2014/314]849 GOI]
- (vii) Hargovind Das K. Joshi vs Collector of customs [1992 (61) ELT 172(SC)]-
- (viii) Universal Traders v. Commissioner [2009 (240) E.L.T. A78 (S.C.)]

6. Personal hearing in the case was scheduled for 03.08.2022. Shri Prakash Shingrani, Advocate, appeared for the personal hearing on 03.08.2022, on behalf of the applicant. He submitted that he applicant was a Turkish national, he purchased gold for conversion to jewellery and had submitted the purchase invoice. He further submitted that the gold was not for commercial purpose but for conversion to jewellery and that the applicant was not a habitual offender. He requested to allow re-export of gold as the applicant was a foreign national and was not aware of the procedure in India.

7. The Government has gone through the facts of the case. The applicant was intercepted near the exit gate after he had cleared himself through the Customs Green channel. The gold was carried by the applicant in a cloth belt worn by him on the waist and was kept in three pouches stitched to the said belt. The applicant did not declare the gold bars as required under section 77 of the Customs Act, 1962. The quantity of gold recovered is reasonably large and in the form of bars (of 1 kg) and it was kept in the manner to avoid detection. The applicant had not disclosed that he was carrying dutiable goods and had he

not been intercepted he would have walked away with the impugned gold without declaring the same to Customs. By their actions, it was clear that the applicant had no intention to declare the impugned gold to Customs and pay Customs duty on it.

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 found on the person of the applicant and it was not declared. Therefore, the gold was also liable for confiscation under these Sections and Government finds that the confiscation of the gold bars in the instant case was therefore, 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.), 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. 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. A plain reading of the section 125 shows that the Adjudicating Authority is bound to give an option of redemption when goods are not subjected to any prohibition. In case of prohibited goods, such as, the gold, the Adjudicating Authority may allow redemption. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods. This exercise of discretion will depend on the nature of the goods and the nature of the prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as conditions of import have not been satisfied, may not be harmful to the society at large.

12. 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.”

13.1. 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.

13.2. 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.

14. In a recent judgement passed by the Hon'ble High Court, Madras on 08.06.2022 in WP no. 20249 of 2021 and WMP No. 21510 of 2021 in r/o. Shri. Chandrasegaram Vijayasundarm + 5 others in a similar matter of Sri. Lankans wearing 1594 gms of gold jewellery (i.e. around 300 gms worn by each person) upheld the Order no. 165 - 169/2021-Cus (SZ) ASRA, Mumbai dated 14.07.2021 in F.No. 380/59-63/B/SZ/2018-RA/3716, wherein Revisionary Authority had ordered for the confiscation of the gold jewellery but had allowed the same to be released for re-export on payment of appropriate redemption fine and penalty.

15. The Government notes that the gold bars were recovered during the personal search of the applicant. The gold bars had not been ingeniously concealed but had been kept in pouches stitched to the cloth belt worn by the applicant and Government observes that sometimes passengers resort to such methods to keep their valuables / precious possessions safe. There are no allegations that the applicant is a habitual offender and was involved in similar offences 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 Customs Act, 1962 and while imposing quantum of penalty. Government notes that the applicant is a foreign national and has prayed that he be allowed to re-export the gold and for reduction in the penalty amount, which he has stated to be harsh and punitive.

16. In view of the foregoing paras, the Government finds that as the applicant had not declared the gold at the time of arrival, the confiscation of the gold was justified. However, considering that the gold was not being ingeniously concealed and found on his person, it was brought for conversion to jewellery and the applicant is not a habitual offender, the absolute confiscation of the same was harsh and not justified. In view of the aforesaid facts and considering that the applicants was a foreign national, request to allow re-export of the impugned gold on payment of redemption fine is found reasonable.

17. Government observes that the gold has been valued at Rs. 81,01,290/-. The Government notes that the penalty of Rs.10,00,000/- imposed on the applicant under Section 112(a)& (b) of the Customs Act, 1962 is appropriate and commensurate with the omissions and commissions committed by the applicant.

18. In view of the above, the Government modifies the impugned order of the Appellate Authority in respect of the impugned seized gold. The impugned 03 gold bars totally weighing 3000 gms having 23.86 K (995.0 %) purity and valued at Rs. 81,01,290/- is allowed to be re-exported on payment of redemption fine of Rs. 16,00,000/- (Rupees Sixteen Lakhs only). The penalty of Rs. 10,00,000/- 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 by the OAA.

19. The Revision Application is disposed of on the above terms.

Shrawan Kumar
30/11/22

(SHRAWAN KUMAR)

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

ORDER No 353/2022-CUS (WZ) /ASRA/

DATED 30.11.2022

To,

1. Mr. Gokhan Demir, Icerenkoy, Mahallesi, Oyaci SOKAK, No. 17D: 19 3400, Atasehi-Istanbul, Turkey
Address No. 2: C/o Shri Prakash Shingrani, (Advocate), 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai 400 051
2. Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
3. The Commissioner of Customs (Appeals), Mumbai -III, Awas Corporate Point, 5th Floor, Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumbai - 400 059.

Copy to:

1. Shri Prakash 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. Noticeboard.