

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. 371/342/B/WZ/2019-RA / 17578 : Date of Issue :- 13.12.22.

ORDER NO. 376 /2022-CUS (WZ)/ASRA/MUMBAI DATED 12.12.2022
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.

(i). F.No. 371/342/B/WZ/2019-RA

Applicant : Shri. DHANAK MANSUKLAL VASHRAM

Respondent : Pr. Commissioner of Customs, CSMI Airport, Mumbai
400 099.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal
No. MUM-CUSTOMS-PAX-APP-249/2019-20 dated 28.06.2018
through F.No. S/49-607/2018 passed by the Commissioner
of Customs (Appeals), Mumbai – III.

ORDER

This revision application has been filed by Shri. DHANAK MANSUKLAL VASHRAM (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTM-PAX-APP-249/2019-20 dated 28.06.2018 through F.No. S/49-607/2018 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant who had arrived on 05.09.2018 from Sharjah and had opted for the green channel to clear himself from Customs, was intercepted by Customs Officers. Examination of his baggage led to the recovery of one gold bar of ten tolas i.e. weighing 116 grams, valued at Rs. 3,17,533/- concealed in a box of Nivea cream.

3. The Original Adjudicating Authority (OAA), viz, Dy. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. Aircus/49/T2/486/2018C dated 05.09.2018, ordered for the absolute confiscation of the gold bar weighing 116 grams, valued at Rs. 3,17,533/- under Section 111(d) of the Customs Act, 1962 and a penalty of Rs. 35,000/- under Section 112 of the Customs Act, 1962 was imposed on the applicant

4. Aggrieved by the said order, the applicant preferred an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III, who vide Order-In-Appeal No. MUM-CUSTM-PAX-APP-249/2019-20 dated 28.06.2018 through F.No. S/49-607/2018 who allowed the gold bar weighing 116 grams and valued at Rs. 3,17,533/- to be redeemed on payment of a fine of Rs. 1,00,000/-. The penalty of Rs. 35,000/- imposed on the applicant was upheld.

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 order passed by the lower authority was not in conformity with the spirit of the B.Rules, 1998 and hence, the same deserves to be set aside in the interest of justice.

5.02. that the Applicant submits that the order of the release of the gold on heavy fine was not at all justified; the Applicant had clearly stated that all the Gold were meant for his personal & household use & it was not brought for any sale or trade purpose & that he had not contravened any provisions of C.A. 1962 or any other allied Laws for the time being in force and he had no malafide intention to hide anything from Customs to avoid payment of duty and the same was alleged wrongly.

5.03. that the Applicant submits that he had brought the gold which is of very nominal value & not concealed, but was kept in NIVEA cream for safety purpose; that he may be allowed to re-export of the Gold as he normally a residing abroad; that the applicant had satisfied all the general conditions for being eligible for Notfn. no. 12/2012 - CUS dt. 17/3/2012 as he is bonafide eligible passenger of Indian origin, who has come to India, after a period of over 6 months of his stay abroad & as per the law, he can import Gold Bars, Ornaments upto 1 Kg., on the concessional rate of duty (i.c. 10%), in convertible Foreign Exchange; that the Applicant was having sufficient foreign exchange at the time of arrival to pay the duty; that through oversight he had gone to green channel as he was tired; that he had no malafide intention to hide anything from Customs to avoid duty.

5.04. that the Applicant was not a carrier and he was the actual owner of the gold; that gold had not been ingeniously concealed as wrongly alleged in the order; that the applicant was ready to pay the duty & nominal fine.

5.05. that the R/F of Rs. 100000/- imposed u/s 125 of C.A. 1962 in addition to duty was not at all justified in as much as the cost, duty & fine taken together would be more than market values of the Gold; that the applicant has still not cleared the gold;

Applicant has prayed to the Revision Authority to allow the re-export of the gold as normally he resides abroad or in the alternative, the impugned gold may be released on nominal fine and at concessional rate of duty as per Notfn. no. 12/2012-CUS dt. 17/3/2012 and that the personal penalty of Rs. 35,000/- be waived/reduced.

6. Personal hearing in the case was scheduled through the online video conferencing mode for 26.08.2022. Shri. O.M Rohira, Advocate for the applicant appeared for personal hearing and submitted that applicant is an eligible person, therefore, he requested for concessional rate of duty. He also requested to reduce fine and penalty.

7. Government has gone through the facts of the case. The Government notes that the Applicant had not declared the gold and had opted for the green channel. Applicant had admitted that he had not declared the gold. A declaration as required under section 77 of the Customs Act, 1962 was not submitted and therefore, the confiscation of the gold was justified.

8. The applicant in his written submissions has stated that he was eligible to bring gold upto 1 kg by virtue of his continuous stay abroad of over 6 months. Also, he has claimed that at the relevant time he possessed foreign currency for payment of duty at concessional rate. On the issue of concealment, the applicant has stated that he had not concealed the gold and had kept the same in a box containing Nivea cream for safety reasons.

9. Government notes that on the OIO itself and inventory list, the duration of stay abroad is given as 6 months 20 days and date of departure mentioned therein is 14th February, 2018. The Government finds that neither original authority nor the appellate authority has given any findings on the applicant's submission of being an 'eligible passenger'. It is evident that by virtue of his continuous stay abroad, he was eligible to bring upto 1 kg gold at concessional duty. Government observes that gold brought by such eligible persons is not prohibited provided that payment of the concessional duty is made through foreign currency. The applicant has stated that foreign currency was available with him at the relevant time. Contention, if any, that currency was not sufficient to meet requirement of duty payment, will not alter the eligibility

based on period of stay abroad, as currency can be arranged subsequently to pay applicable duty for claiming of goods.

10. Government observes that the AA had allowed the redemption of the impugned gold on payment of a fine of Rs. 1,00,000/- and penalty of Rs. 35,000/- was imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 by OAA had been upheld. Applicant has contended that redemption fine and the personal penalty were excessive and disproportionate.

11. In view of the foregoing paras, the Government finds that as the applicant had not declared the gold bar at the time of arrival, the confiscation of the gold bar was justified. However, the claim of the applicant about his eligibility to import the gold bar had not been looked into and addressed. The fact remains that in the OIO, the duration of his stay abroad has been noted. This indicates that the applicant was otherwise eligible to clear the gold at concessional rate of duty.

12. Government is inclined to accept the averments made by the applicant that by virtue of his continuous stay abroad, he was eligible to bring upto 1 kg of gold at concessional rate of duty to be paid in foreign currency and that the import of gold for such person was not prohibited.

13. The applicant had kept the gold bar in a box containing Nivea cream. Government notes that at times travellers resort to hiding their valuable possession out of safety concerns. The fact remains that the applicant had not declared the gold and hence, the same was rightly confiscated and applicant had made himself liable for penal action.

14. The redemption fine imposed on the applicant by the AA is Rs. 1,00,000/-. Government finds that the redemption fine constitutes 31.5% of

the value of the seized gold. Government finds the same harsh and excessive, and therefore, is inclined to reduce the same.

15. Government finds that the penalty of Rs. 35,000/- imposed on the applicant under Section 112) of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

16. In view of the above, Government modifies the OIA passed by the AA to the extent that the redemption fine is reduced to Rs. 60,000/- (Rupees Sixty Thousand only) and the impugned gold is allowed to be cleared at concessional rate of duty as per the conditions in the relevant notification. The personal penalty of Rs. 35,000/- upheld by the AA is found appropriate.

17. Revision Application is decided on the above terms.


(SHRAWAN KUMAR)

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

ORDER NO. 376/2022-CUS (WZ)/ASRA/MUMBAI DATED 12.12.2022.

To,

1. Shri. DHANAK MANSUKLAL VASHRAM, AT CHANAKA TAL, BHESAN, DIST: JUNAGARH, GUJARAT : 362020
2. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Terminal 2, Level – II. Sahar, Mumbai 400 099.

Copy to:

1. Shri. DHANAK MANSUKLAL VASHRAM, c/o. O.M Rohira, Advocate, 148/301, Uphaar, 10th Road, Khar (W), Mumbai – 400 052.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.