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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

**F.No. 371/453A & 453B/WZ/2019-RA** / 7620 Date of Issue : 16.12.2022

ORDER NO. <sup>377-</sup><sub>378</sub> /2022-CUS (WZ)/ASRA/MUMBAI DATED 13.12.2022  
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.

**F.No. 371/453A & 453B/WZ/2019-RA**

Applicants : (i). Shri. Siddeeqe Mundodan,  
(ii). Smt. Jamsiya Sahra Karalil

Respondent : Pr. Commissioner of Customs, CSMI, Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal Nos.  
MUM-CUSTOM-PAX-APP-587 & 588/2019-20 dated  
15.10.2019 issued on 30.10.2019 through F.No. S/49-  
183/2019 passed by the Commissioner of Customs  
(Appeals), Mumbai - III.

**ORDER**

This revision application has been filed by (i). Shri. Siddeeqe Mundodan and (ii). Smt. Jamsiya Sahra Karalil (hereinafter referred to as the Applicants or alternately as Applicant no. 1 [A1] and Applicant no. 2 [A2] resp.) against the Orders-In-Appeal Nos. MUM-CUSTOM-PAX-APP-587 & 588/2019-20 dated 15.10.2019 issued on 30.10.2019 through F.No. S/49-183/2019 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). Brief facts of the case are that on 16.04.2018, the Customs Officers at CSMI Airport, Mumbai had intercepted the applicants upon their arrival from Dubai by Fly Dubai Flight No. FZ-445 /15.04.2018, after they had cleared Customs through the green channel and were proceeding to the exit gate alongwith their two children. To the query put forth to them about possession of any dutiable goods on their person or their baggage, the applicants had both replied in the negative. Both the applicants were asked to pass through the door frame metal detector (DFMD) which did not indicate the presence of any metal on their person. Thereafter, a personal search of the applicants were conducted. Nothing incriminating was found during the personal search of A1. However, a personal search of A2 led to the recovery of two thin plastic bags which had been cleverly concealed between two layers of crape bandage which had been wrapped around her waist and had been concealed by her innerware. The two thin plastic bags contained a brown coloured substance and the baggage screening machine indicated presence of gold in dust form and the same totally weighed 2090 grams.

2(b). Government Approved Valuer assayed the two bags and declared that the brown colour substance in the two bags was gold dust / powder of 999% (24k) purity, 1254 grams of gold dust could be extracted and the same was provisionally valued at Rs. 35,69,987/-.

2(c). Nothing incriminating was found in the baggage of the applicants. A1 revealed that A2 was his wife and that the gold belonged to him and he had purchased the same in the form of bars which had been converted to gold dust to avoid detection and evade payment of customs duty. A1 also revealed that his wife i.e. A2 had concealed the gold on her person as he felt that a lady passenger would not arouse any suspicion.

2(d). Subsequently, the gold dust in powder form was forwarded by the respondent to India Government Mint, Mumbai for converting the same into gold bars which certified that the total weight of the gold was 1374.067 grams of 991.80 fineness and was valued at Rs. 38,79,728/-.

3. The Original Adjudicating Authority viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/399/2018-19 dated 24.12.2018 issued on 28.12.2018 through F.No. SD/INT/AIU/175/2018 AP'A' (S/14-5-227/2018-19/Adjn) ordered for the absolute confiscation of the seized gold weighing 1374.067 grams, valued at Rs. 38,79,728/- under Section 111(d), (l) and (m) of the Customs Act, 1962 and imposed a personal penalty of Rs. 4,50,000/- and Rs. 1,00,000/- on the A1 and A2 respectively under Section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, applicants filed appeals before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III, who vide his Orders-In-Appeal Nos. MUM-CUSTOM-PAX-APP-587 & 588/2019-20 dated 15.10.2019 issued on 30.10.2019 through F.No. S/49-183/2019, did not find any reason to interfere in the impugned OIO passed by the OAA.

5. Aggrieved with the above order, the Applicants have filed these revision applications and have stated that the AA had erred in confiscating the gold

and in similar cases option of redemption have been granted. They have craved to refer and rely upon the similar orders.

The applicants have prayed that the absolute confiscation be set aside, personal penalty be reduced or grant any such reliefs as deemed fit.

6. Personal hearings in the case through the video conferencing mode were scheduled for 10.08.2022, 24.08.2022. Shri. Prakash Shingarani, Advocate appeared for personal hearing on 24.08.2022 and submitted that the applicants had come with family, their savings were converted to gold dust in Dubai and they wanted to save money by not declaring the gold dust. He submitted that quantity is small, it belonged to family, applicants are not habitual offenders. He requested to release goods on RF and penalty.

7. The Government has gone through the facts of the case. The Applicants were intercepted when they had attempted to walk through the green channel. The impugned gold was converted into the form of dust and had been cleverly concealed by A2 in her innerware. Infact, when she was made to pass through the DFMD, it did not indicate the presence of gold. Only when they were searched, the concealment was detected. The act was pre-meditated and well thought out. It is clear that the applicants had resorted to an ingenious method of concealment to evade duty. By this action, it is clear that applicants had no intention to pay the Customs duty. The Applicants had not declared the impugned gold as required under section 77 of the Customs Act, 1962. In this case, more than quantity of gold, what matters is the type of concealment adopted to evade duty. The applicants had pre-planned and selected the method that they would use to avoid detection and thereby to evade Customs duty. The absolute confiscation of the gold is therefore justified and thus, the Applicants had rendered themselves liable for penal action.

8. 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".

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 Applicants thus 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 manner in which the gold was attempted to be brought in i.e. the gold had been converted in the form of dust and thereafter, had been concealed in the innerware; A2 had been chosen by A1 as she would not arouse suspicion when travelling with children; the method used indicates that the gold dust cannot be detected by a DFMD, that quantity of gold is quite substantial. It also revealed clear intention and a systematic attempt to evade duty and smuggle the gold into India. The circumstances of the case, especially the method of converting gold bars into gold dust adopted by the applicants, probates that they did not have any intention of declaring the gold to the Customs at the airport. These facts have been properly

considered by the Appellate Authority and the lower adjudicating authority while absolutely confiscating the gold dust.

12. 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 seized goods is the discretionary power of the adjudicating authority depending on the facts of each case and after examining the merits. In the present case, the manner of concealment being clever and ingenious, clear attempt to smuggle gold in the form of a unique method i.e. converting the same to gold dust, this is a fit case for absolute confiscation as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of offence, the adjudicating authority had rightly ordered the absolute confiscation of gold. The redemption of the gold will encourage non-bonafide and unscrupulous elements to resort to concealment and bring gold. If the gold is not detected by the Customs authorities the passenger gets away with smuggling and if not, he has the option of redeeming the gold. Such acts of mis-using 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. 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.

13. The Government finds while imposing penalties on A1 and A2 under Section 112(a) and (b) of the Custom Act, 1962, the lower authorities have considered the role played by each of them in the smuggling activity and had appropriately imposed a higher penalty of Rs. 4,50,000/- on A1 and a lower quantum of Rs. 1,00,000/- on A2. Government finds that the penalty imposed on A1 and A2 is commensurate with the omissions and commissions committed by them and is therefore, not inclined to interfere in the same.

14. The Applicant has pleaded for setting aside the Order passed by the Appellate Authority which has upheld the order passed by the Original Adjudicating Authority. The Government, keeping in mind the facts of the case is in agreement with the observations of the Appellate authority and finds that absolute confiscation is proper, legal and judicious and also penalty imposed under Section 112 (a) and (b) of the Customs Act 1962 is appropriate. Government does not find it necessary to interfere in the OIA passed by the AA.

15. Accordingly, the Revision Applications filed by the applicants is dismissed.

*Shrawan*  
13/12/22  
( SHRAWAN KUMAR )

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

ORDER NO. <sup>377-</sup>378 /2022-CUS (WZ)/ASRA/MUMBAI DATED 13.12.2022

To,

1. Shri. Siddeeqe Mundodan, Poduvanni Parambil House, P.O. Ozhukur, Kondotty VIA, Mallapuram Dist., Kerala - 673 642.
2. Mrs. Jamsiya Sahra Karalil, (Poduvanni Parambil House, P.O. Ozhukur, Kondotty VIA, Mallapuram Dist., Kerala - 673 642.
3. Principal Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal - 2, Level - II, Sahar, Andheri (East), Mumbai - 400 099.

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.