



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

F.No. 371/350-351/B/2019-RA | ४४४१ | Date of Issue: २६.12.2022

ORDER NO. ४११ /2022-CUS (WZ) /ASRA/MUMBAI DATED २६.12.2022 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.

Applicants : Mr. Rojasara Atulkumar Manharlal
Mr. Ardeshara Vipulkumar Bhailalbhai

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-280 and 281/19-20 dated 11.07.2019 [F.No. S/49-708/2018] passed by the Commissioner of Customs (Appeals), Mumbai - III.

ORDER

The Revision Applications have been filed by Mr. Rojasara Atulkumar Manharlal and Mr. Ardeshara Vipulkumar Bhailalbai (herein referred to as Applicant No 1 and 2 respectively) against the Orders-in-Appeal Nos. MUM-CUSTOM-PAX-APP-280 and 281/19-20 dated 11.07.2019 (Date of issue: 22.07.2019) [F.No. S/49-708/2018] passed by the Commissioner of Customs (Appeals), Mumbai - III.

2.1. Brief facts of the case are that on 15.10.2017, the Officers of Customs, at CSI Airport, had intercepted Applicant No. 1, who had arrived from Dubai by Emirates Flight No. EK 500. Applicant No. 1 was intercepted after he had cleared himself through the green channel of Customs. To the query put forth to him regarding possession of any dutiable goods, contraband or gold, Applicant No 1 had replied in the negative. The detailed examination of the trolley carried by Applicant No 1 resulted in the recovery of 18 bars of gold with markings "AL ETIHAD" "DUBAI-UAE" "10 TOLA, 999.0" which were concealed in the cavity of two black and grey coloured dummy mobile phones of mark "cubex interpark" and kept in the upper basket of the trolley. On further enquiry, Applicant No 1 stated that the recovered gold bars did not belong to him but belonged to Applicant No 2. Applicant No 2 who was waiting for Applicant No 1, was then intercepted at the exit gate of the arrival hall without his baggage. The 18 gold bars of 24 KT (999.0% purity), weighing 2088 grams and valued at Rs. 56,87,159/- were seized under the reasonable belief that the same had been smuggled to India in a clandestine manner and in contravention of the provisions of the Customs Act, 1962.

2.2. Applicant No. 1 in his statement interalia stated that the impugned gold was handed over to him at Mumbai Airport by Applicant No.2, who was his distant relative and had offered monetary considerations for carrying the gold and had arranged for the tickets and had carried the gold in the basket of the trolley without declaring the gold to evade payment of Customs duty on the instructions of Applicant No. 2.

2.3. Applicant No.2 in his statement interalia stated that he was the owner of the impugned gold under seizure and the same was concealed in the dummy phones and handed over to Applicant No. 1 by him to evade payment of Customs duty and sell the gold in the local market on profit; that he did not have the bill for the purchase of the gold and also did not have the documentary evidence for amounts generated for purchase of the gold.

3. After due process of investigations and the law, the Original Adjudicating Authority i.e. the Addl. Commissioner of Customs, CSI Airport, Mumbai, vide Order-In-Original No. ADC/AK/ADJN/293/2018-19 dated 25.08.2016 [F.No. S/14-5-06/2018-19 Adjn / SD/INT/AIU/273/2017 AP 'D'] ordered for the absolute confiscation of the gold, totally weighing 2088 gms and valued at Rs. 56,87,159/- under Section 111 (d), (1) and (m) of the Customs Act, 1962 and penalty of Rs. 5,00,000/- and Rs. 7,00,000/- was imposed on Applicant No 1 and 2 respectively under Section 112 (a) and (b) of the Customs Act, 1962.

4. Aggrieved by the Order, the Applicants preferred appeals before the Appellate Authority i.e. Commissioner of Customs (Appeal), Mumbai – III, who vide Orders-in-Appeal Nos. MUM-CUSTOM-PAX-APP-280 and 281/19-20 dated 11.07.2019 (Date of issue: 22.07.2019) [F.No. S/49-708/2018] upheld the Orders-In-Original and rejected the appeals filed by the Applicants.

5. Aggrieved by this Order, the Applicants has filed this revision application on the undermentioned grounds;

5.1. that the order passed by the appellate authority was not on merits and not a speaking order and failed to take cognizance of the submissions made by the Applicant without giving any reason and that the AA cannot shut out or reject a defense merely by observing that the defense submissions are weak and do not provide any relief to the Applicants;

5.2. that the Appellate Authority has not followed the principles of natural justice as laid in the following decisions;

(i) Liberty Oil Mills vs.UOI

- (ii) C.L.Tripathi vs. SBI
- (iii) Pitchaiah vs. Andhra University
- (iv) A.K. Kraipak vs. UOI

5.3. that the Appellate Authority failed to examine any evidence nor also tested the facts by evidence on the touchstone of law and did not determine the issue involved or tested the material evidence, did not examine the pleadings of the Applicant and then reach a conclusion. Reliance has been placed on the following decisions

- (i) M/s Sahara India TV Network vs CCE, Noida by CESTAT, N Delhi
- (ii) Joint Commissioner of Income Tax, Surat vs. Saheli Leasing and Industries Ltd [2010 (205) E.L.T. 705 (SC)]
- (iii) Vikas Enterprises vs. CCE, Allahabad by CESTAT, N. Delhi
- (iv) Sharp Carbon India vs. CCE Kanpur
- (v) UOI vs. Sri Kumar Agencies –Gujarat High Court
- (vi) International Woollen Mills Ltd vs. Standard Wool (UK) Ltd
- (vii) Kranti Associates Pvt Ltd vs. Masood Ahmed Khan [2011(273) E.L.T 345(SC)]
- (viii) Mahabir Prasad Santosh Kumar vs. State of UP and others [1970 SC 1302 AIR]
- (ix) Travancore Rayons Ltd vs UOI [AIR 1971SC 862]
- (x) Woolcombers of India Ltd vs. Woolcombers Workers Union and anr [AIR 1973SC 2758]
- (xi) Siemens Engineering and Mfg Co India Ltd vs. UOI [AIR 1976 SC 1785]
- (xii) Testeel Ltd vs. Desai (NM) –Gujarat High Court
- (xiii) SSE Hari Nagar Sugar Mills Ltd vs. Shyam Sundar Jhunjhunwala [AIR 1961 SC 1669]
- (xiv) Bhagat Raja Case [AIR 1957 SC 1606]

5.4. That important defence issues were not discussed or countered by the Appellate Authority;

5.5. That Applicant No. 1 was not in conscious possession of the gold and thus cannot be alleged to have committed the offence punishable under Section 112 of the Customs Act, 1962;

- (i) Madan Lal vs. State of H.P [2003(SCC (CrI.) 1664]
- (ii) J.A. Naidu vs. State of Maharashtra [AIR 1979 SC 1537]
- (iii) State of Maharashtra vs. Natwarlal [AIR 1980) S.C. 593]
- (iv) Chaganraju vs. State of A.P [AIR 1980 S.C. 477]

5.6. That Applicant No 2 admitted that he had kept the contraband clandestinely in the mobile phones without the knowledge of Applicant No 1 and Applicant no. 2 owned the responsibility for the offence. That they retracted their statements incriminating themselves and that retracted statements cannot be made use against them and there was no evidence to show that Applicant No.1

was in conscious possession of the goods. The Applicants have relied upon the following case laws in support of their contention:

- (i) Noor Agha vs. Customs [2008 16 SCC 417]
- (ii) Ritesh Chakraborty vs. State of M.P [2006 (12) SCC 321]
- (iii) Bholu Singh vs. State of Punjab [(2011) 11 SCC 653]
- (iv) State of Delhi vs. Ram Avtar [(2011) 12 SCC 207]
- (v) Ashok Kumar vs. Rajasthan [(2013) 2 SCC 67]
- (vi) State of Punjab vs. Balkar Singh and anr [(2004) 3 SCC 582]
- (vii) Avtar Singh and others vs. State of Punjab [(2007) 7 SCC 419]
- (viii) State of Punjab vs. Hari Singh and others [(2009) 4 SCC 200]
- (ix) Paramjit Singh vs. State of Punjab
- (x) Baldev Singh vs. State of Punjab [2005(1) RCR (Criminal) 823]
- (xi) State of Punjab vs. Nachhatar Singh @ Bania [2007 (3) RCR (Criminal)]
- (xii) Sukhdev Singh alias Sukha vs. State of Punjab [2006(1) RCR (Criminal 4)]
- (xiii) Jit Singh vs. State of Punjab [2008 (2) RCR (Criminal) 655]

5.7. That Retracted statements of the Applicants should not have been relied upon and that if the maker of the statement subsequently retracted the earlier statement then what should be the treatment of that statement during adjudication or prosecution is the subject matter in the case of adjudication. The Applicants' relied upon the following case laws in support of their contention that retracted statement cannot be used against the maker of the statement, if the same is not rebutted by the department with corroborative evidence;

- (i) Motesham Mohd. Ismail vs. UOI [2007(220) E.L.T. (S.C)]
- (ii) Assistant Collector of C.Ex, Rajamundry vs. Duncan Agro Industries Ltd [2000(8) SC530]
- (iii) Vinod Solanki vs. UOI [2009(233) E.L.T. 157(SC)]
- (iv) DRI vs. Mahendra Kumar Singhal [2016(333) E.L.T. (250) (Del)]
- (v) Commissioner of C.Ex, Ahmedabad-III vs. Deora Wires N Machines Pvt Ltd [2016(332) E.L.T 393(Guj)]
- (vi) CCE, Delhi-I vs. Vishnu and Co Pvt Ltd [2016 (332) E.L.T. 793(Del)]
- (vii) Rakesh Kumar Garg vs. CCE [2016(331) E.L.T. 321(Del)]
- (viii) Ravindran and Peter John vs. Supdt of Cus [TIOL-89-SC-CUS]
- (ix) V. Ananthraman vs. UOI [2003(151)E.L.T. 278 (Bom)]
- (x) Nicco Corporation vs. Commissioner of Service Tax [2014(307) E.L.T. 228(Cal)]
- (xi) Hissar Pipes Pvt Ltd vs CCE, Rohtak [2015(317)E,L,T, 136(Del)]
- (xii) Tejwal Dyestuff Industries Ltd vs. CCE, Ahmedabad
- (xiii) CIT vs. Dhingra Metal Works [2010-TIOL-693-HC-DEL-IT]
- (xiv) DRI vs. Moni [2010(252) E.L.T. 57 (Del)]
- (xv) Amrik Singh Saluja vs. UOI [20169331) E.L.T. (57) (Del)]

- (xvi) K.I. Paunny vs. Asstt. Collector of CE, Cochin [1997(3) SCC 721]
- (xvii) Mrshail Nageshi Pare vs. State of Maharashtra [Air 1985 SC 866]
- (xviii) Francis Stanley @Stalin vs. IO NCB, Thiruvananthapuram [2006(13) SCALE 386]
- (xix) A.Tajudeen vs. UOI [2015(317) E.L.T. 177(SC)]
- (xx) Vinod Kumar Sahdev vs. UOI [2009(4) JCC 2636]
- (xxi) Abid Malik vs. UOI [2009(5) AD (Delhi) 749]
- (xxii) Harpreet Sing Bahad vs. DRI- Bail App 2211/08
- (xxiii) Vikas Mohan Singhal vs. DRI [2009(243) E.L.T. 507 (Del)]
- (xxiv) Basant Singh vs. Janki Singh [AIR 1967 SC 341]
- (xxv) Kishori Lal vs. Mst Chaltibai [AIR 1959 SC 504]
- (xxvi) Haricharan Kurmi vs. State of Bihar [AIR 1964 SC 1184]
- (xxvii) State of Maharashtra vs. Mohd Ismail Ahmed Doda [1990(50) E.L.T]
- (xxviii) State of Maharashtra vs. Syed Mohammed Hasim Ali Musavi [1991(51) E.L.T. 419 Bom]
- (xxix) Ram Prakash vs. Collector of Customs [2003(161) E.L.T882 Tri Del]

5.8. That the evidence should be corroborated in material particulars which means that there has to be some independent witness tending to incriminate the particular accused in the commission of the crime as held in the following case laws;

- (i) Rameshwar s/o Kalyan vs. State of Rajasthan [AIR 1952 SC 54]
- (ii) Sarwan Singh vs. Rattan Singh vs. State of Punjab [AIR 1957 SC 637]
- (iii) Suresh Chandra Bahri vs. State of Bihar [AIR 1994 SC 2420]
- (iv) Nandini Satpathy vs P.L.Dani [1978 AIR 1025]

5.9. That the right against self incrimination and personal liberty are non-derogable rights and the right of the police to investigate an offence and examine any person do no and cannot override constitutional protection in Article 20(3) of the Constitution and it is the duty of the prosecution to prove the prisoner's guilt and no person accused of any offence shall be compelled to be a witness against himself. The Applicant has relied upon the following case laws in support of their contention;

- (i) Selvi vs. State of Karnataka [2010 (7) SCC 263]
- (ii) A.T Maideen vs, The Senior Intelligence Officer

5.10. That Gold is not 'prohibited goods', but only 'restricted goods'. Prohibition relates to goods which cannot be imported by any one, such as arms, ammunition, drugs etc. The intention of the provisions of Section 125 is clear that import of such goods under any circumstances would cause danger to the health,

welfare or the morals of people as a whole. Release of gold confiscated would not cause danger or detrimental to public health and would not fall in the category of prohibited goods and can be released under Section 125 of the Customs Act, 1962

- (i) Om Prakash Bhatia vs. Commissioner of Customs, Delhi [2003(155) E.L.T. 423(SC)]
- (ii) UOI vs. Dhanak M Ramji [1997(91) E.L.T. 277 (AP)]
- (iii) Shaikh Jamal Basha vs. Government of India [1997 (91) ELT 277(AP)]
- (iv) T. Elavarasan Vs Commissioner of Customs (Airport), Chennai [2011 (266) ELT 167 (Mad)]
- (v) Sapna Sanjeeva Kolhi v/s Commissioner of Customs, Airport, Mumbai [2010(253) E.L.T A52 (SC)]

5.11. That financial capacity cannot be a factor to prove the allegation that the gold was illicitly purchased and that the allegation against the Applicants that they did not carry licit documents for financing the purchase as well as their licit acquisition cannot be a ground to hold that the goods are liable for confiscation. The Applicant has relied on the following case laws in support of their contention:

- (i) Naveed Ahmed Khan vs. Commissioner of Customs [2005 (182) E.L.T. 494 Tri]
- (ii) T.V. Mohammed vs. Commissioner of Customs –Order of CESTAT Bangalore dated 30.01.2006

5.12. Penalties imposed on the Applicants were disproportionate to the value of gold importer and imposition of heavy penalties on the Applicant is not sustainable;

- (i) UOI vs. Mustafa & Najibai Trading Co [(1998) 6 SCC 79]
- (ii) Management of Coimbatore District Central Co-operative Bank vs. Secretary, Coimbatore DCC Bank [(2007) 4 SCC 669]

5.13. Binding precedents were not followed by the OAA and the AA while adjudicating the cases as required and held in the following judgement;

- (i) E. I. Dupont India Pvt-Ltd vs. UOI [2014(5) TMI 128 (Guj HC)]
- (ii) Claris Life Sciences Limited vs. UOI [2014(1) TMI 1467(Guj HC)]

5.14. That the decision relied upon by the OAA is not applicable to the instant case as in the decision of Smaynathan Murugesanm the absolute confiscation of the goods smuggled by a carrier was upheld by the Court which is not in the instant case

5.15 That decisions have to be consistent and as reasonable possible with previous judicial decisions on the same subject and precedent is a legal principle or rule that is created by a court decision. The Applicant has relied on the following case laws in support of their contention

- (i) CCE, Calcutta vs. Alnoori Tobacco Products [2004 (170) E.L.T. 135(SC)]
- (ii) Escorts vs. CCE, Delhi [2004(173) E.L.T. 113(SC)]
- (iii) CC(Port) Chennai vs. Toyota Kirloskar [2007(213) E.L.T. 4(SC)]

5.16 That Applicant No 2 purchased the gold bars in Dubai on credit for selling them in India to make some profit and concealed the gold bars in dummy mobile phones for clearing the gold without payment of duty . Thus Applicant No. 2 claims ownership of the goods and redemption of the goods on payment of duty and fine as gold was not a prohibited goods and that Applicant No. 1 was no way concerned with any smuggling activity. The Applicant has cited the following case laws in support of their contention:

- (i) Halithu Ibrahim vs. Commr.of Customs [2002-TIOL-195-CESTAT-MAD]
- (ii) Felix Dolores Fernandes vs. Commr of Customs [2002-TIOL-194-CESTAT-MUM]
- (iii) Yakub Ibrahim Yusuf vs. CC, Mumbai [2011(363) E.L.T 685(Tri-Mum)]
- (iv) Reji Cherian vs. CC, Kochi
- (v) P.Sinnasamy vs. CC Chennai [2007(220) E.L.T 308(Tri-Chennai)]
- (vi) Krishnakumari vs. CC Chennai [2008(229) E.L.T 222(Tri-Chennai)]
- (vii) S.Rajgopal vs. CC Trichy [2007(219) E.L.T. 435 (Tri-Chennai)]
- (viii) M.Arumugam vs. CC Tiruchirapally [2007(220) E.L.T. 311(Tri-Chennai)]
- (ix) Shaikh Jamal Basha vs GOI [1997(91) E.L.T 277(A.P)]
- (x) CC(P) vs Uma Shankar Verma [2000 (120) E.L.T. 322.Cal]
- (xi) T.E.avarasan vs. Commr. Of Customs
- (xii) V.P.Hameed vs. Collector of Customs Bombay [1994(73) E.L.T. 425]
- (xiii) Kader Mydin vs CC (Preventive), West Bengal [2001(136) E.L.T 758]
- (xiv) Sapna Sanjeev Kohli vs, CC, Airport, Mumbai [2008 (230) E.L.T. 305]
- (xv) Vattallal Moosa vs. Collector of Customs, Chennai [2008(230)E.L.T.305]
- (xvi) GOI order No 426/2004 dated 21.09.2004
- (xvii) Kuttiyandi vs. Commissioner of Customs, Chennai-Appeal No C/29/2009 before CESTAT Bench
- (xviii) Dhanak Ramji vs.CC, Airport, Mumbai [2009(237)E.L.T. 280(Tri-Mum)] and SLP filed before Supreme Court UOI vs. Dhanak Ramji [2010(252) E.L.T. A 102 (SC)J]
- (xix) A.Rajkumari vs. Commr. of Customs (Airport Air Cargo) Chennai [2015(321) E.L.T. 540]
- (xx) Commissioner vs. A. Rajkumari [2015(321) E.L.T A 207(SC)]
- (xxi) GOI order No T2014/314/849 GOI in the case of Mohd.Zia Ul Haque
- (xxii) Copier Company vs. CC, Chennai [2007(218) E.L.T. 442 (Tri-Chennai)]

6. Personal hearing in the matter was scheduled for 03.08.2022. Shri Prakash Shingrani, Advocate for the Applicants appeared for the hearing on the scheduled date. He submitted that gold brought by the Applicant is not

very large and Applicant is not a habitual offender and requested that the gold be released on nominal redemption fine and penalty.

7. The Government has gone through the facts of the case. The Applicant No. 1 had been intercepted after he had cleared Customs through the Green Channel. The Applicant No. 1 had been asked repeatedly whether he was carrying any dutiable/prohibited/contraband goods to which he replied in the negative. It was only on detailed examination that the 18 gold bars with makings of "AL ETIHAD" "DUBAI-UAE" '10 TOLA, 999.0" which were concealed in the cavity of two black and grey coloured dummy mobile phones of mark "cubex interpark" and kept in the upper basket of the trolley were recovered, which clearly indicates that there was not an iota of intent on the part of the Applicant No. 1 to declare the gold and pay Customs duty. Further on sustained enquiry, Applicant No. 1 informed that the gold did not belong to him and belonged to Applicant No. 2 and he was carrying the gold for monetary considerations. Also Applicant No. 2 was a frequent traveller and was intercepted at the exit gate without any baggage and admitted to having concealed the gold in the manner stated above, which clearly suggests that Applicant No. 1 and 2 were both in cahoots in the attempt to smuggle in the gold bars. The Applicants' did not declare the gold bars as required under section 77 of the Customs Act, 1962. The quantity of gold recovered is quite large, of commercial quantity and in the form of biscuits (of 1 tola each) and it was ingeniously concealed to avoid detection. The confiscation of the gold is therefore justified.

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. The main issue in the case is the quantum and 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, ingenious and innovative with conscious and firm intent to hoodwink the Customs and evade payment of duty, quantity being quite substantial and for commercial sale, this being a clear attempt to smuggle gold bars in primary form, is a fit case for absolute confiscation as a deterrent to such offenders. Both the Applicants had in cahoots planned the act of concealing the gold in the manner it was done and tried to smuggle the gold through Applicant No. 1, who did this for purported monetary considerations. Thus, taking into account the facts on record and the gravity of offence, the Original Adjudicating Authority had rightly ordered the absolute confiscation of the gold. But for the intuition and the diligence of the Customs Officer, the large quantity of gold would have passed undetected. The redemption of the gold will encourage non bonafide and unscrupulous elements to resort to concealment and bring gold. Such blatant 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 absolute confiscation of the gold would act as a deterrent against such attempts and would deter persons who indulge in such acts with impunity. Therefore, the order of the OAA has been rightly upheld by the Appellate Authority.

12. The Hon'ble Delhi High Court in the case of Jain Exports Vs Union of India 1987(29) ELT753 has observed that, "*the resort to Section 125 of the C.A. 1962, to impose fine in lieu of confiscation cannot be so exercised as to give a bonanza*

or profit for an illegal transaction of imports." 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 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.

13. Government observes that the quantum of gold was quite substantial, of high purity, in primary form, of commercial quantity and it was cleverly concealed in a conscious and premeditated manner. The Applicants in consort with each other tried to carry out the act of smuggling for monetary benefit. It revealed their clear intention to evade duty and smuggle the gold into India. The circumstances of the case especially that it is of substantial commercial quantity and in primary form and was cleverly concealed, clearly brings out that the Applicants' had no intention of declaring the gold to the Customs at the airport. All these facts have been properly considered by the OAA while absolutely confiscating the 18 gold bars, weighing 2088 grams and echoed by the Appellate Authority while upholding the OIO.

14. Applicant No 2, while praying for release of gold on redemption fine and reasonable penalty and Applicant No. 1, while praying for dropping of the proceedings in the Revision Application have relied on a plethora of judgements on several issues. These judgements have either been given in different set of facts or the ratios of the same have been selectively and obliquely applied to. As a result, contrary to the Applicants contentions, the correct position of law was applied by the OAA and the AA in the given set of facts of instant application. The judgements mentioned in the previous paras here are latest on both the subjects of treating gold in the baggage and once goods are held to be prohibited and the circumstances and factors to be considered for allowing redemption of the same.

15. In view of the above, Government upholds the Orders-in-Appeal Nos. MUM-CUSTOM-PAX-APP-280 and 281/19-20 dated 11.07.2019 (Date of issue:

22.07.2019] [F.No. S/49-708/2018] passed by Commissioner of Customs (Appeals), Mumbai III and does not find it necessary to interfere with the same.

16. The Revision Application is rejected as being devoid of merit.


(SHRAWAN KUMAR)

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

ORDER No. ^{M/10-111} /2022-CUS (WZ) /ASRA/ DATED 21.12.2022

To,

1. Shri. Rojasara Atulkumar Manharlal, Chakatekare House, Mardala Post Bantra, Puttur Taluk, D.K., Karnataka 574 230
2. Mr. Adeshara Vipulkumar Bhailalbhair, 31, Tapobhumi CHS Ltd, Opp Vishal Nagar, Insanpur, Ahmedabad 382 443

Address No. 2 for Sr. No 1 and 2: C/o Shri Prakash Shingrani, (Advocate), 12/334, Vivek, New MIG Colony, Bandra (East), Mumbai 400 051

3. Pr. Commissioner of Customs, CSI Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
4. Office of the Principal Commissioner of Customs (Airport), Review Cell, Ist Floor, Avas Corporate Point, Andheri-Kurla Road, Marol, Andheri (E), Mumbai : 400 059.

Copy to:

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2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.