



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre – I, Cuffe Parade,  
Mumbai-400 005

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F.No. 371/344/B/WZ/2019 / 7910

: Date of Issue : 30/12/2022

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ORDER NO. H15/2022-CUS (WZ) / ASRA / MUMBAI/ DATED 29.12.2022  
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.

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Applicant : Shri. Sharvan Punjabi

Respondent : Pr. Commissioner of Customs, CSMI (Airport), Mumbai.

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No. MUM-  
CUSTM-PAX-APP-254/2019-20 dated 28.06.2019 issued on  
12.07.2019 through F.No. S/49-608/2018 passed by the  
Commissioner of Customs (Appeals) Mumbai-III.

**ORDER**

This revision application has been filed by Shri. Sharvan Punjabi (hereinafter referred to as the Applicant) against the Order-In-Appeal no. MUM-CUSTM-PAX-APP-254/2019-20 dated 28.06.2019 issued on 12.07.2019 through F.No. S/49-608/2018 passed by the Commissioner of Customs (Appeals) Mumbai-III.

2. Briefly stated facts of the case are that the applicant had arrived at CSMI Airport, Mumbai from Dubai on 30.09.2018 and was intercepted by Customs Officers after having crossed the Green channel facility. The applicant failed to declare the dutiable goods in his possession. A belt buckle and buckle loop composed of crude gold, weighing 220 grams, valued at Rs. 6,30,297/- were recovered from the possession of the applicant. Earlier, the applicant had arrived on board Emirates Flight EK500 and the duration of his stay abroad was of 2 days.

3. The Original adjudicating authority (OAA) viz. Dy. Commr, CSMI Airport, Mumbai vide her Order-In-Original no. Air Cus/49/T2/626/2018'C' dated 30.09.2018, ordered for the absolute confiscation the crude gold belt buckle and buckle loop, totally weighing 220 grams and valued at Rs. 6,30,297/- under Section 111(d) of the Customs Act, 1962. A penalty of Rs 50,000 under Section 112 of the Customs Act, 1962 was imposed on the applicant.

4. Aggrieved by this order, the applicant filed an appeal with the Commissioner of Customs (Appeals) Mumbai-III, who vide his Order-In-Appeal no. MUM-CUSTM-PAX-APP-254/2019-20 dated 28.06.2019 issued on 12.07.2019 through F.No. S/49-608/2018 did not find any reason to interfere in the OIO passed by the OAA and accordingly, dismissed the appeal.

5. The Applicant has filed this Revision Application inter alia on the following grounds of revision, that;
- 5.01. that the order passed by lower authority was not conformity with spirit of the B.Rules, 1998 and deserves to be set aside in the interest of justice.
  - 5.02. that the order of absolute confiscation of the gold was not at justified as the applicant had clearly stated that all the gold was meant for personal household use & was not brought for any sale trade purpose; that applicant did not have any malafide intention hide anything from Customs and avoid payment of duty wrongly alleged.
  - 5.03. that the Commr. (A), Mumbai, vide his O/A in F S/49-76/2018 dated 25/9/2018 had allowed the non-declared Gold to very frequent visitor on nominal fine and the Commr. (A) had cited various case laws of the Tribunal, Mumbai High Court & Supreme Court, while releasing the Gold; that on this count, the gold brought by the applicant should have been released.
  - 5.04. that the value of the gold was small and was bonafide item and he was the owner; applicant is ready to pay duty and nominal fine.

The applicant has prayed to the Revision Authority to release the gold belt buckle and buckle loop under Section 125 of the Customs Act, 1962 and waive off / reduce the personal penalty of Rs. 50,000/-

6. A personal hearing in the case through the online video conferencing mode was scheduled for 26.08.2022. Shri. O.P. Rohira, Advocate, appeared for personal hearing on 26.08.2022 and reiterated earlier submissions. He requested to release the gold on reasonable RF and penalty.

7. The Government has gone through the facts of the case and notes that the applicant had failed to declare the goods in his possession as required under Section 77 of the Customs Act, 1962. The applicant had not disclosed that he was carrying dutiable goods and had he not been intercepted would have walked away with the impugned crude gold belt buckle and buckle loop without declaring the same to Customs. By his actions, it was clear that the applicant had no intention to declare the impugned gold to Customs and pay Customs

duty on it. The Government finds that the confiscation of the crude gold belt buckle and buckle loop were 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.), 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. 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 the 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. The quantity of gold under import is small and is not of commercial quantity. There are no allegations that the applicant is a habitual offender and was involved in similar offence 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 the Customs Act, 1962 and while imposing quantum of penalty. Absolute confiscation of the gold is harsh and unreasonable. Government is therefore, inclined to set aside the OIA and allow the gold to be redeemed on payment of a fine.

13. The penalty of Rs. 50,000/- imposed by the OAA under Section 112 of the Customs Act, 1962 is commensurate to the omissions and commissions committed by the applicant. Government is not inclined to interfere in the same.

14. For the aforesaid reasons, the Government modifies the OIA to the extent of allowing the redemption of the crude gold buckle and buckle loop weighing 220 grams and valued at Rs. 6,30,297/- on payment of a fine of Rs. 1,25,000 /- (Rupees One Lakh Twenty Five Thousand only). The personal penalty of Rs. 50,000/- imposed by the OAA and upheld by the AA is found to be appropriate.

15. Revision Application filed by the applicant is decided on the above terms.

  
( SHRAWAN KUMAR )

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

ORDER No. 415 /2022-CUS (WZ) /ASRA/MUMBAI DATED 29.12.2022

To,

1. Shri Sharvan Punjabi, Flat No. 201, Parivarthan Apt., Blk No. C-23/24, Dev Samaj Road, Ulhasnagar, Thane - 421 004.
2. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Terminal 2, Level - II. Sahar, Mumbai 400 099.

Copy to:

1. Shri Sharvan Punjabi, C/o. O.P Rohira, Advocate, 148/301, Uphaar, 10<sup>th</sup> Road, Khar (W), Mumbai - 400 052.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.