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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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F.No. 371/343/B/WZ/2018-RA / 2023 Date of Issue : 05.04.2023

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ORDER NO. 415 /2023-CUS (WZ)/ASRA/MUMBAI DATED 03.03.2023  
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 Hibdul Kareem Zahir Hussain

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-CUSTOM-PAX-APP-568/2018-19 dated 25.09.  
2018 [issued on 27.09.2018] through F.No. S/49-  
402/2016-17 passed by the Commissioner of Customs  
(Appeals), Mumbai – III.

**ORDER**

This revision application has been filed by Shri Hibdul Kareem Zahir Hussain (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-568/2018-19 dated 2018 [issued on 27.09.2018] through F.No. S/49-402/2016-17 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant Shri Hibdul Kareem Zahir Hussain, holding an Indian passport L 8664357 issued at Colombo was intercepted by the Customs Officers at CSI Airport, Mumbai after he had cleared himself through Customs Green Channel on arrival from Colombo by flight No. UL. 141 dated 04.10.2014. The personal search of the passenger resulted into the recovery of 04 plain crude gold chains, 02 crude gold chains with pendent, 04 small crude gold rings, 06 big crude gold bangles, 12 small crude gold bangles which were found from his pant pocket. Total weight of the impugned gold was initially found to be 2015 grams and valued them at Rs.49,71,166/-. The officers seized the impugned gold under the reasonable belief that the same were being attempted to be smuggled into India into contravention of the provisions of the Customs Act, 1962. However, on 09.03.2015, in the presence of panchas and the applicant passenger, the final valuation of the impugned seized goods was done by the Government approved valuer and certified that the weight of the impugned gold was to be 1711 gram as the weight of crude gold chain with pendent was wrongly shown as 728 grams instead of 426 grams. Hence, the final correct weight of the impugned gold was 1711 grams and valued at Rs.42,21,173/-.

3. The Original Adjudicating Authority (OAA), viz, Additional Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/RR/ADJN/120/2016-17 dated 24.06.2016, ordered for the absolute

confiscation of the of 04 plain crude gold chains, 02 crude gold chains with pendent, 04 small crude gold rings, 06 big crude gold bangles, 12 small crude gold bangles, totally weighing 1711 grams and valued at Rs.42,21,173/- under 111(d) (1) and 111(m) the Customs Act, 1962 with an option to redeem the goods on payment of fine of Rs.8,50,000/- under Section 125 of the Customs Act 1962 along with Customs duty as applicable. Penalty of Rs.4,25,000/- was also imposed under Sections 112 (a) and (b) of the Customs Act 1962 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-568/2018-19 dated 2018 [issued on 27.09.2018] through F.No. S/49-402/2016-17 upheld the Order in Original and rejected the applicant's appeal.

5. Aggrieved with the above order of the appellate authority, the Applicant has filed this revision application on the following grounds;

(i) That the order of the Commissioner of Customs (Appeals), Mumbai- III is against law, weight of evidence and probabilities of the case.

(ii) that the Applicant has neither concealed nor mis-declared the value of the gold jewellerys and that the applicant came along with his wife and 2 daughters who were wearing the gold jewellerys and not kept in the pant pocket by the applicant.

(iii) That the Applicant is carrying on his business at Sri Lanka and he was doing lucrative business and earning good income and his wife and children are capable of possession jewellerys brought by them. In fact the applicant

also produced the bills for 1711 gms and therefore the Commissioner of Customs (Appeals), Mumbai-III ought to have seen that the applicant came along with his wife and they were wearing the gold jewellery and it was not kept in his pant pocket. That the Appellate Authorities ought to have accepted the version of the applicant and ought to have set aside the order imposing penalty and redemption fine.

(iv) That the CCTV footage was not produced as demanded by applicant through his counsel. That the applicant was forced and compelled to sign the statement contrary to the truth since he was intimidated by the customs officers and the applicant and his family members would be arrested and would have to face dire consequences.

(v) That whenever the passengers were wearing gold jewellery, they need not declare as held by the Kerala High Court in the case of Vigneswaran Sethuraman v/s union of India reported in 2014 E.LT.394 (Ker.) and ought to have followed the said judgement and ordered for the refund of the redemption fine and penalty imposed on the Applicant.

(vi) Both the adjudicating authority and the appellate authority ought to see that the applicant and his family members are not smugglers and they had come for attending a marriage and therefore imposition of Personal Penalty and redemption fine are unwarranted. Absolute confiscation and allowing the goods to be redeemed by imposition of redemption fine and penalty are attracted only in the case of smuggling and only on the carriers who make a flying visit to overseas countries. The Applicant never concealed the gold jewellery brought by him. It was impossible to conceal the gold jewellery in his pant pocket. It will get broken. Therefore the Commissioner of Customs

(Appeals), Mumbai-III ought to have allowed the appeal and cancel the personal penalty and redemption fine.

(vii) The Commissioner of Customs (Appeals), Mumbai-III ought to have seen that the applicant was constrained to clear the goods on payment of penalty and redemption fine by paying the duty since the gold jewellery weighing 2015 gms got reduced to 1711 gms within 3 months and therefore ought to have seen that he lost about 37% of the value of the goods by paying duty. The adjudicating authority ought to have allowed the goods to be re-exported without any penalty and redemption fine.

(viii) that the Applicant passenger who stays for a period of six months are permitted to bring gold and avail concessional duty. The applicant is staying along with his family members for the last 25 years in Srilanka and he is of Indian origin.

(ix) that the passengers (applicant and his family) are not a frequent visitor and ought to have generously considered the case in a sympathetic manner and ought to have permitted to clear the jewels without any fine or penalty.

(x) that gold jewels brought by the Applicant is not for commercial purpose and ought not to have imposed penalty and ought to have released the gold jewellery without penalty, redemption fine and ought to have extended the concessional rate of duty.

(xi) The Applicant may not be deprived of his money paid. Therefore, payment of penalty and redemption fine may be ordered to be returned to him.

(xii) That there is no antecedents of bringing gold into India for the last 25 years of stay in Srilanka and during his visit to India. Hence, the authority ought to have considered sympathetically and ought to have extended the benefits to him and his family members.

In view of the above the applicant requested to set aside the Order in Appeal No MUM-CUSTOM-PAX-APP-568/2018-19, dated 25.09.2018 confirming the order of The Additional Commissioner of Customs and to order for the return of the redemption fine of Rs.8,50,000/- and personal penalty of Rs.4,25,000/- and also to order for the payment of concessional rate of duty and consequently order for the refund of the additional duty paid by him and pass such further order or orders as may deem fit and proper in the circumstances of the case and thus render justice.

6. Personal hearing in the case was scheduled for 4.08.2022, 6.08. 2022, 23.09.2022, 30.09.2022, 6.12.2022 and 20.12.2022. However, no one appeared before the Revisionary Authority for personal hearing on any of the appointed dates for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

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 Government has gone through the facts of the case. The Applicant was intercepted after he had cleared himself through the green channel of

Customs Arrival Hall. 04 plain crude gold chains, 02 crude gold chains with pendent, 04 small crude gold rings, 06 big crude gold bangles, 12 small crude gold bangles were discovered only after the Applicant passed through the metal detector door frame and was then thoroughly checked due to the beep indicating the presence of metal. The Applicant did not declare the gold bars as required under section 77 of the Customs Act, 1962. The quantum of gold recovered is quite large i.e. 1711 grams, which is of commercial quantity and in the form of crude gold jewellery (999.9% purity) as certified by the Gold Valuer. The confiscation of the gold is therefore justified and thus, the Applicant had rendered himself liable for penal action.

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 Applicants 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 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. In the instant case Government notes that the applicant had not disclosed that he was carrying gold and had concealed this fact from the Customs which reveals the intention of the Applicant to evade Customs duty and smuggle the gold into India. In the statement recorded he had admitted that the gold was found from him, however in his appeal he's mentioned that the gold was worn by his wife and children. This appears to be an afterthought as the statements were recorded in front of panchas. The quantity of gold brought in is 1711 grams which is quite large. The applicant has placed reliance in respect of the Kerala High Court case of Vigneswaran Sethuraman v/s union of India reported in 2014 E.LT.394 (Ker.,) for not declaring the gold. Government finds that the said case is not applicable here as in that case the passenger had worn one chain weighing 84 grams and in this case the applicant has brought 1711 grams of crude gold jewellery. In view of the above, Government finds that the applicant had not declared the gold and hence, the same was rightly confiscated and applicant had made himself liable for penal action.

13. The applicant also submitted that he is eligible to bring gold and avail concessional duty as he is staying alongwith his family for the past 25 years in Sri Lanka. 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'. 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 claim of the applicant being an eligible passenger needs to be examined by the Original authority while charging appropriate duty.

14. Government observes that the original adjudicating authority had ordered for the confiscation of the gold bars and allowed the same to be redeemed on payment of redemption fine of Rs. 8,50,000/- under Section 125 of the Customs Act, 1962 and penalty of Rs.4,25,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 by OAA had been upheld by the Appellate Authority. Applicant has requested to order for return of the redemption fine and the personal penalty and to order for payment of concessional rate of duty.

15. In view of the foregoing paras, the Government finds that as the applicant had not declared the impugned gold at the time of arrival, the confiscation of the gold was justified. However, the claim of the applicant about his eligibility to import the gold had not been looked into and addressed. Government observes that in the OIO, it has been noted that he and his family are staying in Sri Lanka for the past 25 years. Therefore this claim of the applicant to clear the gold at concessional rate of duty needs to be reexamined by the original authority.

16. The redemption fine imposed on the applicant by the OAA is Rs. 8,50,000/-. Government finds that the redemption fine constitutes approximately 20% of the value of the seized gold which is not excessive and does not find necessary to interfere with the same.

17. Government finds that the penalty of Rs. 4,25,000/- for the value of the goods seized amounting to Rs. 42,21,173/- imposed on the applicant under Section 112 (a) & (b) of the Customs Act, 1962 is commensurate with the omissions and commissions committed.

16. In view of the above, Government upholds the OIA passed by the AA. The redemption fine of Rs.8,50,000/- and the personal penalty of Rs. 4,25,000/- upheld by the AA is found to be appropriate.

17. Revision Application is decided on the above terms.

*Shrawan*  
31/3/23  
( SHRAWAN KUMAR )

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

ORDER NO. *41* /2023-CUS (WZ)/ASRA/MUMBAI DATED *31*.03.2023.

To,

1. Shri. Hibdul Kareem Zahir Hussain,720, Poonamalee High Road, Aminjakarai, Chennai-600029
2. The Pr. Commissioner of Customs, CSMI Airport, Terminal 2, Level - II, Sahar, Mumbai 400 099.

Copy to:

1. The Commissioner of Customs (Appeals), Mumbai-III, Awas Corporate Point (5th Floor), Makwana Lane, Behind S.M.Centre, Andheri-Kurla Road, Marol, Mumaa-400059.
2. Mr. Abdul Nazeer Advocate No. 65, Barach Road, Varadamma Garden, 3<sup>rd</sup> street, Kilpauk, Chennai-600010
3. Sr. P.S. to AS (RA), Mumbai.
4. File Copy.
5. Notice Board.