



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

F.No. 371/230/B/2019-RA / 17921  
371/232 to 235/B/2019-RA

Date of Issue 03.01.23

ORDER NO. H20 - H24/2022-CUS (WZ)/ASRA/MUMBAI DATED 30.12.2022  
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. 371/230/B/2019-RA.

Applicant : Shri. Mohammed Ajmal Shaikh

F.No. 371/232/B/2019-RA.

Applicant : Ms Kainat Amjad Khan.

F.No. 371/233/B/2019-RA.

Applicant : Ms Kiran Ramsundar Yadav.

F.No. 371/234/B/2019-RA.

Applicant : Shri. Raghiv Faiyaz Shaikh.

F.No. 371/235/B/2019-RA.

Applicant : Shri. Javed Mohammed Shaikh.

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

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal MUM-  
CUSTM-PAX-APP-1047-1051/18-19 dated 28.01.2019  
[F.No. S/49-190/2018] passed by the Commissioner of  
Customs (Appeals), Mumbai-III.

ORDER

These five revision applications have been filed by Shri. Mohammed Ajmal Shaikh (herein after referred to as the Applicant-1), Ms Kainat Amjad Khan (herein after referred to as the Applicant-2), Ms Kiran Ramsundar Yadav (herein after referred to as the Applicant-3), Shri. Raghiv Faiyaz Shaikh (herein after referred to as the Applicant-4) and Shri. Javed Mohammed Shaikh (herein after referred to as the Applicant-5) against the Order in appeal No. MUM-CUSTOM-PAX-APP-1047-1051/18-19 dated 28.01.2019 [F.No. S/49-190/2018] passed by the Commissioner of Customs (Appeals), Mumbai-III. The issue is related to smuggling of gold by Applicant No. 1 and assisted by Applicant No. 2, 3, 4 & 5 and therefore Government takes up all the appeals together for disposal.

2. The Brief facts of the case are that on 10.02.2016 the officers of Customs Air Intelligence Unit (AIU) intercepted a passenger Mr. Mohammed Azmal Shaikh (Applicant No.1) holding Indian passport No. M2857081 at CSI Airport, Mumbai, who had earlier arrived from Dubai by Jet Airways Flight No. 9W-0537 dated 09.02.2016, near the exit gate, after he had cleared himself from the Customs Green Channel. Detailed search of his baggage led into recovery of 24 gold bars of 10 tolas each to be totally weighing 2,784 grams and valued at Rs.73,93,914/-. On being asked Applicant 1 divulged that his friend (Applicant 4) is waiting outside the Airport. He was taken out and Applicant 4 was identified and was brought inside the Airport premises. The gold was seized by the officers in the belief that the same was smuggled into India and liable to confiscation under the provision of Customs Act, 1962. Admittedly the impugned gold bars were supposed to be delivered by the passenger (Applicant No.1) to Applicant- 2 or Applicant-3 working in M/s Livewell Aviation services Pvt Ltd inside the Airport area. Applicant-4 was waiting outside the Airport to coordinate the delivery of the smuggled gold from the Applicant No. 2 & 3 to Mr. Javed Mohammed Shaikh Applicant No.5, as per the instructions of Applicant-5. Statements were recorded wherein all the five applicants admitted their role in this case and also stated that they did it for monetary

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consideration. Applicant-1 also admitted that he had smuggled 200 gms of gold in the month of January 2016 in the same manner, without payment of Customs duty.

3. The Original Adjudicating Authority i.e. Addl. Commissioner of Customs, CSI Airport, Mumbai by a common order i.e. OIO No. ADC/AK/ADJN/171/2017-18 dated 28-02-2018, ordered for absolutely confiscation of 24 gold bars of 10 tolas each totally weighing 2784 gms valued at Rs 73,93,914 under Section 111 (d), (1) & (m) of Customs Act, 1962. Personal penalty of Rs. 7,50,000/- for current case and Rs. 20,000/- for admitted past clearance of 200 gms of gold bars was imposed on Mr. Mohammed Azmal Shaikh under Section 112(a) & (b) of the Customs Act, 1962. Personal penalty of Rs. 7,50,000/- each was imposed on Mr. Raghiv Faiyaz Shaikh and Mr. Javed Mohammed Shaikh Section 112(a) & (b) of the Customs Act, 1962. Personal penalty of Rs. 1,50,000/- each was imposed on Ms. Kainat Amjad Khan and Ms. Kiran Ramsunder Yadav Section 112(a) & (b) of the Customs Act, 1962.

4. Aggrieved by the said order, the applicants filed an appeal before the Appellate Authority i.e Commissioner of Customs (Appeals), Mumbai - III who vide a common order i.e. Orders-In-Appeal No. MUM-CUSTM-PAX-APP-1047-1051/2018-19 dated 28.01.2019 [F.No. S/49-190/2018] rejected their Appeals.

5. Aggrieved with the above orders, the aforesaid Applicants have filed these Revision Applications interalia on the grounds that;

A) Applicant No.1 submitted the following:

i) that the Adjudicating Authority has not taken into consideration the points in Show Cause Notice issued by the Ld. Adjudicating authority, which would clearly reveal that the impugned goods/gold are dutiable goods and not prohibited goods.

ii) that the Respondent has come to the conclusion that the acts and/or omissions on the part of the Applicant was to evade Customs duty. The evasion of Customs duty can be done only in respect of dutiable goods and not prohibited goods.

iii) that once the department accepts that the goods are dutiable, the option of redemption of goods as provided under section 125 of the Customs Act, 1962 will have to be given to the Applicant. Sub-section (1) of Section 125 of the Customs Act, 1962, makes it crystal clear that the Respondent is required to give the Noticee an option to pay fine in lieu of confiscation in respect of the impugned goods, which are dutiable goods. Thus, redemption of dutiable goods on payment of fine in lieu of confiscation is what the Legislature in its collective wisdom has proposed vide sub-section (1) of Section 125 of the Customs Act, 1962, and the same is the intent of the Legislature even then, the dutiable goods were absolute confiscated by the Respondent.

iv) that there are a number of judgments of the Hon'ble Apex Court, the Hon'ble High Courts and the Hon'ble Tribunal, wherein it has been held that gold is not a prohibited item and the same is restricted and therefore it should not be confiscated absolutely and option to redeem the same on redemption fine ought to be given to the person from whom it is recovered. The Noticee submits that some of the judgments are listed below viz.

a. The Hon'ble Supreme Court of India in the case of Hargovind Das K. Joshi Versus Collector of Customs reported in 1992 (61) ELT. 172 (S.C.);

b. The Hon'ble Tribunal in the case of ALFRED MENEZES v/s COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (236) E.L.T. 587 (Tri. Mumbai);

c. The Hon'ble Tribunal in the case of T. ELVARASAN v/s COMMISSIONER OF CUSTOMS (AIRPORT), reported in 2011 (266) E.L.T. 167 (Mad);

d. The Hon'ble Tribunal in the case of YAKUB IBRAHIM YUSUF v/s COMMISSIONER OF CUSTOMS, MUMBAI reported in 2011 (263) E.L.T. 685 (Tri. - Mumbai);

e. The Hon'ble Tribunal in the case of Mohini Bhatia Vs Commissioner of Customs reported in 1999 (106) E.L.T. 485 (Tri-Mumbai);

f. The Hon'ble Supreme Court of India in the case of Universal Traders v. Commissioner - 2009 (240) E.L.T. A78 (S.C.);

g. The Hon'ble Tribunal in the case of In Gauri Enterprises v. CC, Pune - 2002 (145) E.L.T. 706 (Tri-Bang);

h. The Hon'ble High Court in case of Shaik Jamal Basha v. Government of India-1997 (91) E.L.T. 277 (A.P.);

i. The Hon'ble Tribunal in the case of VP Hameed v. Collector of Customs, Mumbai - 1994 (73) E.L.T. 425 (Tri.);

j. The Hon'ble Tribunal in the case of P. Sinnasamy v. Commissioner of Customs, Chennai - 2007 (220) ELT. 308 (Tri. - Chennai);

k. In Union of India Vs Dhanak M. Ramji - 2009 (248) E.LT. 127 (Bom.) affirmed vide 2010 (252) E.LT. A102 (S C.) it was held that gold is not a prohibited item and discretion of redemption can be exercised to the person from whom it was recovered.

l. The Hon'ble Tribunal in the case of A. Rajkumari v. CC (Chennai) 2015 (321) E.LT. 540 (Tri-Chennai);

m. In Kadar Mydin v. Commissioner of Customs (Preventive), West Bengal - 2001(136) E.LT. 758 it was held that in view of the liberalized gold policy of the Government, absolute confiscation is unwarranted and redemption can be allowed;

n. The Hon'ble Tribunal in the case of Sapna Sanjeev Kohli v. Commissioner of Customs, Airport, Mumbai - 2008 (230) ELT. 305;

o. In Vatakkal Moosa v. collector of Customs, Cochin - 1994 (72) ELT. 473 (G.O.I.); Halithu Ibrahim v. CC [2002-TIOL 195-CESTAT-MAD. = 2002 (148) E.LT. 412 (Tribunal); Krishnakumari v. CC, Chennai - 2008 (229) E.LT. 222 (Tri-Chennai) :S. Rajagopal v. CC, Trichy - 2007 (219) E.LT. 435 (Tri-Chennai); M. Arumugam v. CC, Tiruchirappalli, 2007 (220) E.LT. 311 (Tri-Chennai) also it was held that absolute confiscation is not warranted and redemption of gold should be allowed;

p. Cestat, Regional Bench, Allahabad latest Judgement reported in 2018 (359) ELT 265 (Tri-All.)- Commr. Of C. Ex. & S.T., Lucknow V/S Mohd. Halim Mohd. Shamim Khan

v). that in view of the aforesaid submissions, the Customs department shall release the goods u/s. 125 of Customs Act, 1962 on nominal redemption fine and personal penalty as the violation, if any, is of technical in nature,

B) Applicant No.2, 3, 4 & 5 submitted the following

i) that the impugned order passed by the Respondent is bad in law and unjust; that the impugned order has been passed without giving due consideration to the documents on record and facts of the case.

ii. that the Applicants has nothing to do with the said case & therefore the Applicant ought not to have been penalized.

iv. that the Hon'ble Tribunal in the case of Vikram Singh Dahiya V/s. Comm. Of Customs (Export), New Delhi, reported in 2008 (223) E.L.T. 619 (Tri. Delhi) has held that "Statement of co-noticee without any corroborative evidence cannot be taken up as an evidence to impose penalty".

v) that the Personal Penalty on the Applicant may kindly be set aside.

6. Personal hearings in the case was scheduled for 18.10.2022. Shri N. J. Heera, Advocate attended the physical hearing on 16.12.2021 and submitted that gold is not a prohibited item, case is made on assumptions and presumptions and that goods should be released on reasonable Redemption fine and penalty.

7. The Government has gone through the facts of the case and found the following:

i) Applicant no. 1 was intercepted near the Exit gate, after he had cleared himself through Customs by opting green channel. The detailed examination of his baggage resulted in recovery of 24 gold bars of 10 tolas each to be totally weighing 2,784 grams and valued at Rs.73,93,914/-. The applicant had not declared the same on arrival, as required under Section 77 of the Customs Act, 1962. The same was detected only after the detailed examination of the AIU officers.

ii) Applicant no.1 revealed that he had received the gold from an unknown person in Dubai and he was instructed by his friend, Applicant no. 4 to hand over the Gold to a staff of M/s Livewell Aviation Services Ltd inside the CSI Airport, Mumbai (Applicant 2 or Applicant 3).

iii) Applicant no.1 revealed that he had smuggled the gold for monetary consideration and also successfully smuggled the gold with the same modus operandi on previous occasions.

iv) Applicant no. 2 & 3 admitted that they were aware that Applicant no.1 was carrying gold and they would take the gold from him and hand it over to Applicant no. 5 outside the airport. They admitted that they were doing this for monetary

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consideration and had successfully helped to smuggle the gold with the same modus operandi on previous occasions.

v) Applicant No.4 admitted that he had known Applicant No. 1 and 5 and he was aware that the Applicant No. 1 was smuggling gold from Dubai to India and would hand over the same to Applicant No. 2 & 3. His role in this was to coordinate the delivery of the smuggled gold from the Applicant No. 2 & 3 to Applicant No. 5. He admitted that he was doing this for monetary consideration and had successfully smuggled the gold with the same modus operandi on previous occasions.

vi) Applicant No. 5 admitted that he connived with Applicant No 1 to 4 in smuggling the impugned gold.

The Applicants had used an innovative method to hoodwink the Customs and smuggle out the gold without Customs duty being discharged on the same. Applicant had meticulously pre-planned the method adopted to smuggle the gold and had adopted an ingenious method to avoid Customs and payment of duty. Had it not been for the alertness exhibited by the officers of AIU Customs, the applicants would have been successful in smuggling out the gold and evading Customs duty. It is clear that the applicants had resorted to this innovative and ingenious method to evade duty. By this action, it is clear that applicants had no intention to pay the Customs duty. Applicant No.1 had not declared the impugned gold as required under Section 77 of the Customs Act, 1962. In this case, the quantity of gold seized is large and meant for commercial use and moreover, a very innovative and ingenious method to evade Customs duty had been adopted. 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 Applicant No.1 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*



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*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 also observes that the manner in which the gold was smuggled i.e. by using an innovative and ingenious method of exchanging the gold by the International passenger and the employee of M/s Livewell Aviation Services Ltd who would walk through the staff exit of Customs arrival hall to avoid detection, and then hand over the gold to the person standing outside the airport, reveals the innate intention of the Applicants. It also reveals their criminal bent of mind wherein, this method was adopted by them in tandem with a clear intention to evade duty and smuggle the gold into India. The circumstances of the case especially the method adopted of bringing the gold outside the airport with the help of the employees working inside the airport, probates that the Applicant had no intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Appellate Authority and the lower adjudicating authority while absolutely confiscating the impugned gold.

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, innovative and ingenious with a clear attempt to smuggle the gold, this is a fit case for absolute confiscation which would act as a deterrent to such offenders. Thus, taking into account the facts on record and the gravity of the offence, the adjudicating authority had rightly ordered the absolute confiscation of gold. But for the intuition and the diligence of the AIU Officers, the gold would have passed undetected. 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 absolute confiscation order of the adjudicating authority is therefore liable to be upheld and the Revision Application is liable to be dismissed.

13. The Government finds that the applicants have cited and relied upon a plethora of case laws to buttress their case. As already stated, discretion to release the gold is based on various factors such as manner of concealment, quantity, attempt of smuggling with impunity, etc. Commissioner Appeals has also categorically held that *"In such cases of large scale smuggling of gold involving different people who were attributed different functions to facilitate smuggling for monetary consideration, redemption cannot be claimed as a matter of right. Such cases warrant absolute confiscation to discourage organized smuggling of gold.* In this case, the Government finds that the lower authorities have rightly considered all these factors while denying redemption.

14. Applicant No. 2 to 5 has argued that statement of co-noticee without any corroborative evidence cannot be taken up as an evidence to impose penalty. Government finds that the Commissioner Appeal has already dealt the issue in detail at para 7 of his Order

*"...7. I find that Section 112 (b) of the Customs Act, 1962 provides that any person who acquires possession of or is in any way concerned in carrying removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows has reason to believe are liable to confiscation under Section 111 shall be liable to penalty. In this regard as per the confessional statement of all the appellants recorded under Section 108 of Customs Act, 1962, I find that Mr. Javed Khan with the help of other 04 appellants was involved in smuggling of gold into India and was part of some organized smuggling racket. I find that Mr. Mohd Azmal Shaikh, Mr. Raghiv Faiyaz Shaikh, Ms. Kainat Amjad Khan, and Ms. Kiran Ramsunder Yadav were knowingly aided and abetted Mr.*

*Javed Khan in the smuggling of gold for monetary consideration. Regarding the plea of the appellants that statement of co-noticee without any corroborative evidence can not be taken up as an evidence to impose penalty, I find that all the statements were recorded under Section 108 of Customs Act, 1962 which have evidentiary value and no one has retracted their respective statements. I find that the confessional statements of all the appellants were not only regarding the role of others in smuggling but also include self confession that they were involved in smuggling racket for monetary consideration. I find that all the statements corroborate the statements of other appellants and the information divulged by individual was in his/her exclusive knowledge and the activities were inter connected. The revelation by the passenger led to interception of two lady employees of M/s Livewell viz. Ms. Kainat Amjad Khan, and Ms. Kiran Ramsunder Yadav and subsequently to Mr. Raghib Faiyaz Shaikh who was coordinating the entire smuggling operation on behalf on Mr. Javed. ....”.*

In view of the above Government finds that all the five applicants admitted their role in this smuggling case and also have confessed that they did it for monetary consideration. Therefore, Government holds that the penalty of Rs. 7,50,000/- each, imposed on Applicant No.1, 4 & 5 and Rs. 1,50,000/- each, imposed on Applicant No.2 & 3 under Section 112(a) & (b) of the Customs Act, 1962 is appropriate and commensurate with the omission and commission committed by them. Personal penalty of Rs. 20,000/- imposed on the basis of the statement given by the Applicant No.1 stating that he had brought gold bars on the earlier occasion, is also sustained. The Government does not find it necessary to interfere in the order passed by the lower authorities.

15. The Applicants have 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 and judicious and also the penalty imposed on all

the applicants under Section 112(a) & (b) of the Customs Act 1962 is proper and judicious and commensurate with the omission and commissions committed, does not find it necessary to interfere in the same.

16. The Revision Applications filed by the five applicants are hereby, dismissed.

*Shrawan Kumar*  
30/12/22

( SHRAWAN KUMAR )  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. <sup>H20-</sup> H24/2022-CUS (WZ) /ASRA/

DATED 30.12.2022

To,

1. Mr. Mohd. Azmal Shaikh, C-504, 5 floor, Noor-E-Jahan Complex. Co-Operative Housing Society-1, Opp. Kurla Nursing Home Pipe Road, Kurla (W), Mumbai-70.
2. Mr. Raghiv Faiyaz Shaikh, B-604, 6 floor. Noor-E-Jahan Complex Co-Operative Housing Society-1, Opp. Kurla Nursing Home Pipe Road, Kurla (W), Mumbai-70.
3. Ms. Kainat Amjad Khan, Dadamiya Chawl, opp. Reliance Energy. Opp. Prabhat Colony, Santacruz (E), Mumbai 400 055
4. Ms. Kiran Ramsunder Yadav, Room No. 11, Banwari Pandey Chawl, Nr. Gokul Anand Hotel, Santosh Nagar, Dahisar (E), Mumbai 400 068
5. Mr. Javed Mohammed Shaikh, Room No. 843, Plot No. 15., Lotus Colony, Abdul Hamid Road, Shivaji Nagar, Govandi, Mumbai 43
6. The Pr. Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal - 2, Sahar, Mumbai - 400 059.

Copy to:

7. Advani Sachwani & Heera, Advocates, Nulwala Building, 41 Mint Road, Fort, Opp. G.P.O. Fort, Mumbai 400 001.
8. Sr. P.S. to AS (RA), Mumbai.
9. Guard File.
10. File Copy.
11. Notice Board.