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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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Mumbai-400 005

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(i). F.No. 371/307/B/WZ/2019-RA / 2024 Date of Issue 12.04.2023

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ORDER NO. 120 /2023 CUS (WZ)/ASRA/MUMBAI DATED 31.03.2023  
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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(i). F.No. 371/307/B/WZ/2019-RA

Applicant : Shri. Faisal Veerumbin Chalil

Respondent : Pr. Commissioner of Customs, CSI Airport, Mumbai

Subject : Revision Applications filed respectively, under Section 129DD  
of the Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-108/2019-20 dated 23.05.2019  
issued on 30.05.2019 through F.No. S/49-209/2018/AP  
passed by the Commissioner of Customs (Appeals), Mumbai –  
III.

**ORDER**

This revision application has been filed by Shri. Faisal Veerumbin Chalil (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-108/2019-20 dated 23.05.2019 issued on 30.05.2019 through F.No. S/49-209/2018/AP passed by the Commissioner of Customs (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant on arrival at CSMI Airport, Mumbai from Dubai by Etihad Airways!Flight No. EY 204 was intercepted by the Customs Officers on 22.01.2017 after he had crossed the green channel. The detailed examination of his checked-in baggage resulted in the recovery of 02 (two) nos of cut pieces of gold concealed inside the housing of the copper winding of mixer / grinder of 'Clikon' brand, model no. GALAXY-CK2160. The two cut pieces of gold was found to be of 99.9% purity, totally weighing 1379 grams and valued at Rs. 37,35,325/-.

2(b). The applicant in his statement dated 23.01.2017 recorded under Section 108 of the Customs Act, 1962 revealed that he was not the owner of the gold and had carried the gold on request for a monetary consideration.

3. After due process of the law, the Original Adjudicating Authority, viz Addl. Commissioner of Customs, CSI Airport, Mumbai vide Order-in-Original No. ADC/AK/ADJN/187/2017-18 dated 07.03.2018 issued from F.No. S/14-5-16/2017-18-ADJN (SD/INT/AIU/10/2017-AP'A)] ordered for the absolute confiscation the 02 nos of cut pieces of gold totally weighing 1379 grams and valued at Rs. 4,00,000/- was also imposed on the applicant under Section of 112 (a) and (b) of Customs Act, 1962.

4. Aggrieved by the said order, the applicant filed an appeal before the appellate authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide Order-In-Appeal No. MUM-CUSTOM-PAX-APP-108/2019-20 dated 23.05.2019 issued on 30.05.2019 through F.No. S/49-209/2018/AP did not find it necessary to interfere in the OIO passed by the OAA.

5. Aggrieved with the above order-in-appeal, the Applicant has filed this revision application on the following grounds;

5.01. that the impugned OIA is bad in law and unjust; has been passed without giving due consideration to the documents on record and facts of the case,

5.02. that the lower authorities ought to have appreciated that dutiable goods brought in by the Applicant were neither restricted nor prohibited,

5.03. that the applicant had brought this type of goods for first time and there was no previous case registered against him,

5.04. that the Show Cause Notice issued by the Respondent clearly revealed that the impugned goods/ gold were dutiable goods and not prohibited goods; that the acts and/or omissions on the part of the applicant to evade Customs duty could only be done in respect of dutiable goods and not prohibited goods; that once the department or respondent had accepted that the goods are dutiable, then the option to redeem the goods as provided under Section 125 of the Customs Act, 1962 should be granted to the applicant.

5.05. The applicant has relied upon the undermentioned cases to defend their case that gold was not a prohibited item and was restricted and therefore it should not have been confiscated absolutely and option to redeem the same on redemption fine ought to have been given;

(a). Hargovind Das K Joshi v/s. Collector of Customs [1992 (61) ELT 172 SC], Absolute confiscation of goods without considering question of redemption on payment of fine although having discretion to do so under Section 125, matter remanded back.

(b). Alfred Menezes v/s. Commissioner of Customs (Mumbai) [2011 (236) ELT 587 (Tri-Mumbai)], Section 125(1) ibid clearly mandates that it is within the power of the adjudicating authority to offer redemption of goods even in respect of prohibited goods.

(c). T. Elvarasan v/s. Commr. Of Customs (Airport), 2011-266-ELT-167-Tri-Madras on the issue of gold chains brought from Singapore and seized on the ground of non-declaration on arrival; passenger living abroad for more than 6 months and entitled to import gold; gold not prohibited item option to redeem the goods; impugned gold ordered to be released provisionally subject to adjudication proceedings.

(d). Yakub Ibrahim Yusuf v/s. Commissioner of Customs, Mumbai [Final Order No. A/362/2010-WBZ-II/(CSTB) dated 28.10.2010 in Appeal no. C/51/1996-Mum] [2011-263-ELT-685-Tri-Mumbai]. *Term prohibited goods refers to goods like arms, ammunition, addictive drugs, whose import in any circumstance would danger or be detriment to health, welfare or morals of people as whole and makes them liable to absolute confiscation.*

(e). Mohini Bhatia vs. Commr. Of Customs [1999-106-ELT-485-Tri-Mumbai on prohibited goods and restricted goods. Gold was not included in the part II of restricted item.

(f). In Universal Traders vs. Commissioner [2009-240-ELT-A78-SC], the apex court allowed redemption of exported goods being not prohibited.

(g). In Gauri Enterprises vs. C.C Pune [2002-145-ELT-706-Tri-Bang], held that if similar goods had been released on fine earlier, selective absolute confiscation was not called for, Absolute Confiscation should be exception rather than a rule.

(h). In Shaik Jamal Basha v. Government of India 1997 (91) ELT 277 (A.P.) the Hon'ble High Court held that gold is allowed for import on payment of duty and therefore Gold in the form other than ornaments imported unauthorized can be redeemed.

(i). In VP Hameed v. Collector of Customs, Mumbai - 1994 (73) ELT 425 (Tri.) it was held that there is no bar in allowing redemption of gold

being an item notified under Section 123 of Customs Act, 1962 or for any other reason.

(j). In *P. Sinnasamy v. Commissioner of Customs, Chennai* 2007 (220) ELT 308 (Tri-Chennai), the Hon'ble Court allowed redemption of absolutely confiscated gold observing that option to redeem the gold to be given as there is no bar against such option by reason of goods being an item notified under Section 123 of Customs Act, 1962 or for any other reason.

(k). In *Union of India Vs Dhanak M. Ramji* - 2009 (248) ELT 127 (Bom.) affirmed vide 2010 (252) ELT 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). In *Kadar Mydin v. Commissioner of Customs (Preventive), West Bengal* - 2001 (136) ELT 758 it was held that in view of the liberalised gold policy of the Government, absolute confiscation is unwarranted and redemption can be allowed.

(m). In *Sapna Sanjeev Kohli v. Commissioner of Customs, Airport, Mumbai* - 2008 (230) ELT. 305 the Tribunal observed that the frequent traveller was aware of rules and regulations and absolute confiscation of gold jewellery not warranted which may be cleared on payment of redemption fine.

(n). In *Vatakkal Moosa v. Collector of Customs, Cochin* 1994 (72) ELT. 473 (G.O.I.); it was held that absolute confiscation is not warranted and redemption of gold should be allowed.

(o). *Halithu Ibrahim v. CC* [2002-TIOL 195-CESTAT-MAD. = 2002 (148) ELT 412 (Tribunal)]; it was held that absolute confiscation is not warranted and redemption of gold should be allowed.

(s). In the *COMMR. OF C. EX. & S.T., LUCKNOW VI MOHD. HALIM MOHD. SHAMIM KHAN* Final Order No. A/71054/2017-SM(BR), dated 13-9-2017 in Appeal No. C/70595/2016, reported in 2018 (359) E.L.T 265 (Tri-All.) ; Only prohibited goods cannot be released on payment of redemption fine Gold not being prohibited goods, cannot be confiscated

absolutely - Order permitting release of such gold on payment of redemption fine in lieu of confiscation upheld.

Under the circumstances, the applicant has prayed that in view of the aforesaid case laws, the gold be released on payment of nominal redemption fine as per Section 125 of the Customs Act, 1962; or pass any other order as deemed fit and proper.

6. Personal hearing in the case was scheduled for 09.12.2023. Shri. N.J Heera, Advocate appeared in the office on 09.12.2022 for the personal hearing and submitted that gold was not prohibited item, the applicant is not a habitual offender, quantity of gold is not large. He further requested that gold be released on nominal fine and penalty.

7. The Government has gone through the facts of the case and notes that the applicant had not declared the gold while availing the green channel facility. The impugned gold of substantial quantity had been ingeniously concealed inside the housing of the copper winding of the mixer / grinder machine. The gold was of high purity i.e.. 99.9% and in primary form which indicates that the same was for commercial use. The applicant clearly had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Further, the applicant had cleverly and ingeniously concealed the gold inside the housing of the copper winding of the mixer / grinder to avoid detection. The nature of concealment reveals the mindset of the applicant to not only evade duty but smuggle the gold. It also reveals that the act committed by the applicant was conscious and pre-meditated. The applicant had an opportunity to declare the dutiable goods in his possession but having confidence in the nature of his concealment, he failed to avail the same. Had he not been intercepted, the applicant would have gotten away with the gold

concealed in mixer / grinder machine. Government finds that the confiscation of the gold was 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 ‘applicant’ 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 besides the quantum of gold and its purity, indicating that the same was for commercial use, the manner in which the gold was attempted to be brought into the country is vital. The impugned gold



was ingeniously concealed inside the housing of the copper winding of the mixer / grinder. This act was conscious and pre-meditated which reveals the intention of the applicant. The aforesaid quantity, purity, ingenious concealment, applicant being a carrier, probates that he did not have any intention of declaring the gold to the Customs at the airport. All these have been properly considered by the Original Adjudicating Authority while ordering the absolute confiscation of the gold and appellate authority had rightly upheld the same.

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, conscious and ingenious, type of gold being for commercial use, this being a clear attempt to brazenly smuggle the impugned gold, 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 the impugned gold. But for the intuition and the diligence of the Customs Officer, 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. Government is in agreement with the order of the AA absolutely confiscating the impugned gold. The absolute confiscation of the gold would act as a deterrent against such persons who indulge in such acts with impunity. Considering the aforesaid facts, Government is inclined not to interfere in the order of absolute confiscation passed by the AA.

13. Government finds that the penalty of Rs. 4,00,000/- imposed on the applicant by the OAA under Section 112(a) & (b) of the Customs Act, 1962 and upheld by the AA is commensurate with the omissions and commissions committed by the applicant in carrying the gold in an ingenious manner and therefore, is not inclined to interfere in the same.

14. For the aforesaid reasons, the Government finds that the OIA passed by the AA is legal and proper and does not find it necessary to interfere in the same. The Revision Application filed by the applicant, fails.

15. Accordingly, for the reasons stated above, the Revision Application filed by the applicant is dismissed.

  
( SHRAWAN KUMAR )

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

**ORDER No. H20/2023-CUS (WZ) /ASRA/MUMBAI DATED 03.03.2023**

To,

1. Shri. Faisal Veerumbin Chalil, Chalappadikkal House, PO Thachampoyil, Thamarassery via, Kozhikode, Kerala – 673 573.
2. Pr. Commissioner of Customs, CSI Airport, Terminal – 2, Level – 2, Sahar, Andheri East, Mumbai – 400 099.

Copy to:

1. A.M Sachwani / V.M Advani / N.J Heera / R.R Shah, Advocates, Nulwala Bldg, Ground Floor, 41 Mint Road, Opp. G.P.O, Fort, Mumbai – 400 001.
2. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.