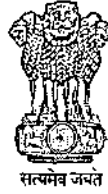


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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

(i). F.No. 371/192-193/B/WZ/2019-RA/2890 : Date of Issue : 12.04.2023

ORDER NO. 422-423/2023-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.

(i) F.No. 371/192-193/B/WZ/2019-RA

Applicant No. 1. : Shri. Deepak Indramani Pandey
Applicant No. 2. : Shri. Nabeel Anwar Shaikh

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

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Orders-in-Appeal Nos.
MUM-CUSTM-PAX-APP-1158 & 1159/2018-19 dated
28.02.2019 issued on 06.03.2019 through F.No. S/49-
271/2017 passed by the Commissioner of Customs
(Appeals), Mumbai - III.

ORDER

These two revision applications have been filed by Shri. Deepak Indramani Pandey and (ii). Shri. Nabeel Anwar Shaikh [hereinafter referred to as the applicants, alternately and more specifically as Applicant no. 1 (A1) and Applicant No. 2 (A2) resp.] against the Orders-In-Appeal Nos. MUM-CUSTOM-PAX-APP-1158 & 1159/2018-19 dated 28.02.2019 issued on 06.03.2019 through F.No. S/49-271/2017 passed by the Commissioner of Customs (Appeals), Mumbai – III.

2(a). Brief facts of the case are that on 24.09.2015, the Customs staff (Hawaldar) at CSMI Airport, Mumbai noticed 3 packages lying unclaimed on the sofa located near the Customs Superintendent's Room. Immediate examination of the CCTV footage indicated that a crew member of Jet Airways and more specifically, A1 had kept the said packages on the sofa and through his airline, he was called to the airport. A1 was shown the CCTV footage and he admitted that he had dropped the said packages on the sofa out of fear of being caught as on that day he had noticed that the crew members were being checked.

2(b). Examination of the said 3 packages resulted in the recovery of 10 FM gold bars of 10 tolas each, totally weighing 1166 grams valued at Rs. 28,06,673/-.

2(c). A1 in his statement recorded under Section 108 of the Customs Act, 1962 informed he was a flight attendant with Jet Airways and on 24.09.2015, he was on Jet Airways Flight No. 9W543 which was a quick turnaround flight from Dubai to Mumbai; that during the flight a passenger had given him the package; that the passenger informed him that he would follow him outside the airport; that he was not aware of the quantity; that he had carried the package for a monetary consideration; that at the airport

when the officers had stopped the crew, he panicked and went to the empty hall and kept the packages on the crevice of the sofa located there; that to identify the passenger who had handed over the package to him on the flight, he was shown the CCTV and he identified the person as A2.

2(d). The investigating agency issued numerous summons to A2 but he had not responded. Thereafter, action under Section 174 of the IPA, 1860 was also initiated.

2(e). Vide letter dated 17.12.2015, A1 retracted his statement dated 24.09.2015 and gave a different version that during the flight somebody had placed the packages containing gold bars in his bag; that at the airport when he had opened his handbag, he found the packages there; that he had panicked and left the packages on the sofa. Department had filed rebuttal dated 01.01.2016;

2(f). A2 vide his letter dated 09.02.2016 claimed ownership of the gold bars and stated that since he did not have money to pay the duty, he kept the packages containing gold in the handbag of A1 while the aircraft was on flight. Thereafter, on 16.03.2016, A2 appeared in the office of the investigating agency.

2(g). Statement of A1 was again recorded on 12.08.2016 and when he was confronted with the disclosures made by A2 that he had kept the gold in the handbag of A1 when he was sleeping in the flight, A1 stated that this was incorrect; that he had been shown the photograph of A1 and had been informed that A2 would be handing over the package containing gold to him during the flight.

(2h). The investigating agency had analysed the bank account and bank statements of A2 and it was noticed that transactions of a large amount beyond his profile were found. Also, the bank statement other than salary account of A1 indicated large transactions.

3. The Original Adjudicating Authority viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/RR/ADJN/568/2016-17 dated 27.03.2017 issued through S/14-5-85/2016-17 Adjn (SD/INT/AIU/353/2015 AP-'B') ordered for the absolute confiscation of the 10 gold bars of 10 tolas each, totally weighing 1166 grams, valued at Rs. 28,06,673/- under Section 111(d), (l) and (m) of the Customs Act, 1962 and imposed a personal penalty of Rs. 3,00,000/- on the applicant no. 1 under Section 112(a) and (b) of the Customs Act, 1962 and imposed a penalty of Rs. 2,00,000/- on A2 under Section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III, who vide his Orders-In-Appeal Nos. MUM-CUSTOM-PAX-APP-1158 & 1159/2018-19 dated 28.02.2019 issued on 06.03.2019 through F.No. S/49-271/2017, did not find any reason to interfere with the impugned the OIO.

5. Aggrieved with the above order, A1 has filed this revision application and the grounds of appeal are as under;

5.01. that the panchnama was fabricated and the statement of A1 was recorded by force, threat and ill-treatment; that A1 had operated as a flight attendant in Jet Airways Flight 9W 543 between Dubai and Mumbai on 23/24-9-15 and since it was a quick turn-around flight; that he had carried only a small hand bag which contained his personal belongings; that the flight from Dubai to Mumbai was a non-stop flight of duration 4 ½ hrs; that he had kept his hand bag on the last overhead bin alongwith other crew members; that on his arrival at CSIA, when he was about to exit the arrival hall,

he had opened his handbag and was surprised to see three small heavy packages wrapped with tapes; that he panicked and dropped the packages on the sofa near the Superintendents room and left; later upon reaching home he was called back to the airport; that the CCTV footage was shown to him wherein his act of dropping the package had been recorded; that he informed that maybe somebody had kept the package in his handbag; that he was forced to admit to the offence of smuggling of gold and forced to give statement to suit their story; that on 17.12.2015, he had retracted his statement dated 24-09-2015;

5.02. that the statement of A1 was recorded under threat and physical torture; that exclusion rule prevents the admissibility of evidence in such cases; that A1 had produced email from his office dated 24.09.2015, wherein his seniors had taken up the matter with Customs that A1 had been beaten up; that he has relied upon the undermentioned case laws on the issue;

(a). Supreme Court's judgment in Poolpandi V. Superintendent Central Excise, 1992 (60) ELT 24 (SC) that the presence of a lawyer could be allowed by the inquiry officer;

(b). Mahendra Jain vs. Union of India passed by the Calcutta High Court;

(c). Assistant Collector of Central Excise, Rajamundpy Vs. Duncan Agro Industries Ltd., reported in 2000 CrI.L.J. 4035,

(e). MUTHUSWAMI Vs. STATE OF MADRAS of the full bench of the Apex Court reported in AIR 1954 SC 4, it is well settled law that the confession should not be accepted merely because it contains a wealth of detail which could have been invented and unless the main features of the story are shown to be true,

(f). Supreme Court case of D. K. Basu v. State of West Bengal

(g). High Court, Calcutta in the case of C.C (Prev.) vs. Puni Dhapa Lokeswar Rao.

5.03. that evidence against A1 was prejudicial; that A2 had mentioned that he had seen A1 on 2-3 occasions during the flights which he had taken; that in duty roster it appeared that A1 and A2 had travelled earlier from Muscat to Mumbai on 11.08.2015; that A2 had simply stated that he had seen A1 on 2-3; that it was not possible for A1 to remember each and every passenger; that

the retracted panchanama and statement dated 24.09.2015 should not have been relied upon; that rebuttal of the retraction filed by the department on 01.01.2016 was not admissible in law;

(a). case of K.I. Paunny Vs. Asstt. Collector of CE Cochin, 1997 (3) SCC 721, passed by the Apex Court;

(b). case of Shrishail Nageshi Pare Vs. State of Maharashtra, AIR 1985 SC 866 passed by the Apex Court while considering the probative value of the retracted;

(c). case of Premchand Vs. Central Bureau of Investigation, 1997 (1) EFR 374, passed by the Madhya Pradesh High Court;

(d). case of Sri Krishna V Kurukshetra University, AIR 1976 SC 376 passed by the Apex Court;

(e). case of Kisan Lal Shivchand Rai v CIT (88 ITR 293) passed by the Punjab & Haryana High Court.

(f). Basant Singh v. Janki Singh AIR 1967 SC 341 passed by the Apex Court.

(g). Kishori Lal v. Mst. Chaltibai AIR 1959 SC 504 passed by the Apex Court.

(h). Ram Singh Versus Central Bureau of Narcotics reported in (2011)11 SCC 347

(i). Tofan Singh V. State of Tamil Nadu reported in (2013)16 SCC 31

5.04. that further statement of A1 should not have been relied upon as there was no independent corroboration; that they have placed reliance on the following cases;

(a). Madras High Court case of A.T.Maideen vs The Senior Intelligence Officer; (b). Supreme Court's case of SELVI VS. STATE OF KARNATAKA (2010) 7 SCC 263;

(c). Customs vs Dina Aruna Gupta Delhi High Court held on 22 July, 2011;

(d). Calcutta High Court in C.C. (Preventive) v. Puni Dhapa Lokeswara Rao reported in 2009 (248) E.L.T 141 (Cal.), wherein it was held that confessional statement needs independent corroboration and when voluntary character of the statement itself is in doubt the same cannot be the basis for holding the guilt against the person giving such statement.

5.05. that the rebuttal dated 1-1-16 of the retraction was contradictory to the panchnama dated 24-9-15 which proved that the panchnama was manipulated and fabricated; that there are various interpolations; that the entire operation of interrogation, personal searches carried out on the crew member who had returned back to the airport on 24.09.2015 had not been recorded; that personal search of Mr Jay Seth who was a member of the crew in the flight 9W-543 was also carried out and he was also made a pancha; that conscious possession of smuggled goods by A1 and presumption of culpable mental state of A1 had not been proved; that they have relied on the following case laws;

- (a). Madan Lal and another Vs. State of H. P. 2003 SCC (Crl.) 1664;
- (b). J.A. Naidu v. State of Maharashtra (AIR 1979 S.C. 1537)
- (c). State of Maharashtra v. Natwarlal (AIR 1980 S.C. 593)
- (d). Chaganraju v. State of A.P. (AIR 1980 S.C. 477)
- (e). Noor Agha Vs. Customs (2008) 16 SCC 417;
- (f). Ritesh Chakraborty Vs. State of M.P. (2006) 12 SCC 321;
- (g). Bholu Singh Vs. State of Punjab (2011) 11 SCC 653;
- (h). State of Delhi Vs. Ram Avtar (2011) 12 SCC 207
- (i). Ashok Kumar Vs. Rajasthan (2013) 2 SCC 67.
- (j). State of Punjab Vs. Balkar Singh and another [(2004) 3 SCC 582]
- (k). Avtar Singh and others Vs. State of Punjab [(2007) 7 SCC 419]
- (l). State of Punjab Vs. Hari Singh and others [(2009) 4 SCC 2001.
- (m). State of Punjab v. Balkar Singh and another 2004 (3) SCC 582
- (n). Paramjit Singh v. State of Punjab 2008(2) RCR (Criminal) 515
- (o). Baldev Singh v. State of Punjab 2005(1) RCR (Criminal), 823
- (p). State of Punjab v. Nachhattar Singh @ Bania, 2007(3) RCR (Criminal)
- (q). Sukhdev Singh alias Sukha v. State of Punjab, 2006 (1) RCR
- (r). Jit Singh v. The State of Punjab, 2008(2) RCR (Criminal), 655

5.06. that the panch witnesses were not independent and hence, the case of the prosecution was doubtful; that the panchnama was made in the presence of two panch witnesses viz., Mr Radhey Shyam Sharma, Duty Manager in Jet Airways Ltd and Mr Jay Seth, Flight Attendant in Jet Airways Ltd; that they have placed reliance on the following case laws;

- (a). Intezar Ahmed Sultan Ahmed Shaikh vs State Of Gujarat Anr. on 12 February, 1996 passed by Gujarat High Court -.
 - (b). State of Punjab v. Balbir Singh,
 - (c). Navinchandra Dungarshi Doshi v. The State of Gujarat of Gujarat High Court.
 - (d). Kanu Ambu Vish v. State of Maharashtra of Apex Court;
- 5.07. that the allegation of identity theft or use of mobile numbers obtained using fake documents was not proved; that the case against A1 was made on the basis of assumption and presumption; In support of the argument, the respondent has relied upon judgments passed by the CESTAT, New Delhi and reported in 1996 (83) E.L.T. 175 (Tribunal) in the case of J. Singh Vs Commissioner of Customs, New Delhi and Vikram Singh Dahiya Vs Commissioner of Customs (Export), New Delhi reported in 2008 (223) E.L.T.619 (Tri. Del) wherein it was held that "*Statement of co-noticee without any independent corroboration cannot form the basis of formation of a charge of involvement in smuggling activities*".
- 5.08. that A1 wanted to present co-accused (A2) as a defense witness but the opportunity was denied; that the order of the Adjudicating Authority dated 27-3-17 was not an order on merits and not a speaking order; that principles of natural justice had not been complied with; that they have relied upon the following case laws;
- (a). Meenakshi Associates Pvt. Ltd. v. CCE, Noida 2009 (1) TMI 552 CESTAT, NEW DELHI and
 - (b). Afloat Textiles Pvt. Ltd. v. CCE, Vapi 2007 (7) TMI 444-CESTAT, AHMEDABAD;
 - (c). Chintamoni Padhan v. Paika Samal
 - (d). Joint Commissioner of Income Tax, Surat vs. Saheli Leasing & Industries Ltd., of Apex Court reported in 2010 (253) ELT 705 (S.C.);
 - (e). M/s. Vikas Enterprises vs CCE, Allahabad, CESTAT, New Delhi;
 - (f). M/s. Sharp Carbon India Vs Commissioner of Central Excise, Kanpur
 - (g). -UOI vs Sri Kumar Agencies Gujarat High Court reported 01.12.2010;

- (h). M/s. International Woolen Mills Ltd Vs. M/s. Standard Wool (UK) Ltd of Supreme Court.,
 - (i). Kranti Associates Pvt. Ltd. Vs. Masood Ahmed Khan of Supreme Court, {Citation:- 2011 (273) ELT 345 (SC)} ;
 - (j). M/s. Mahabir Prasad Santosh Kumar vs. State of U.P and others, AIR 1970 SC 1302,
 - (k). M/s. Travancore Rayons Ltd. vs. The Union of India and others, AIR 1971 SC 862,
 - (l). M/s. Woolcombers of India Ltd. vs. Woolcombers Workers Union and another, AIR 1973 SC 2758 of Apex Court;
 - (m). Siemens Engineering and Manufacturing Co. of India Ltd. vs. UOI and another, AIR 1976 SC 1785 of the Supreme Court
 - (n). Teststeels Ltd. vs Desai (N.M.) of Gujarat High Court;
 - (o). SSE Hari Nagar Sugar Mills Ltd., v. ShyamSundar Jhunjhunwala [A.I.R. 1961 S.C. 1669] of Supreme Court;
 - (p). Bhagat Raja case [A.I.R. 1957 S.C. 1606] of Supreme Court
- 5.09. that there was no application of mind in issuing the OIO; that the OAA had failed to give an opportunity of cross-examination of panchas and officers which was against the principles of natural justice; they have relied upon the following decisions;
- (a). Rajendra Bajaj vs. Commr. of Cus., CSIA, Mumbai;
 - (b). Gunwantra Harivallabha Jani, vs Col. of C.Excise on 20 February, 1987
- 5.10. that applicant no. 2 had requested his brother-in-law had suggested to carry some gold back and had handed over 3 packets which contained 10 bars of 10 tolas each of gold alongwith an invoice; that money to pay Customs duty could not be arranged; that in the flight A2 saw A1 who appeared friendly; that after dinner was served, he discreetly placed the 3 packets containing gold in the handbag of A1; that he planned to follow A1 to collect the gold; that he tore off the invoice; that A2 claimed ownership of the gold; A2 has placed reliance in the under mentioned cases on confessional statements;
- (a). A.T.Maideen vs The Senior Intelligent of Madras High Court; that A2
 - (b). Haricharan Kurmi v. State of Bihar AIR 1964 SC 1184

- (c). J.Singh Vs Commissioner of Customs, New Delhi 1996 (83) E.L.T. 175 (Tribunal-Del)
- (d). Vikram Singh Dahiya Vs Commissioner of Customs (Export), New Delhi reported in 2008 (223) E.L.T.619 (Tri. Del)
- 5.11. that gold was not a prohibited item; that no nexus had been proved; that he claimed ownership of the gold bars under confiscation; that he has placed reliance on the following case laws;
- (a). Halithu Ibrahim Vs Commissioner of Customs [2002-TIOL 195-CESTAT- MAD]
- (b). Felix DorexFernnees vs Commissioner of Customs [2002 TIOL-194- CESTAT- MUM]
- (c). Yakub Ibrahim Yusuf Vs CC, Mumbai 2011 (263) ELT 685 (Tri-Mumbai)
- (d). RejiCheriyen Vs CC, Kochi
- (e). P.Sinnasamy Vs CC, Chennai 2007 (220) ELT 308 (Tri-Chennai)
- (f). Krishnakumari Vs CC, Chennai 2008 (229) ELT 222 (Tri-Chennai)
- (g). S.Rajagopal Vs CC, Trichy 2007 (219) ELT 435 (Tri-Chennai)
- (h). M Arumugam Vs CC, Tiruchirapalli, 2007 (220) ELT 311 (Tri-Chennai)
9. (i). Shaik Jamal Basha V. Government of India (1997(91) E.L.T. 277 (A.P.)
- (j). Commissioner of Customs (Preventive) Vs. Uma Shankar Verma (2000 (120) E.L.T. 322 Cal.)
- (k). T.Elavarasan vs The Commissioner of Customs
- (l). VP Hameed Vs Collector of Customs, Bombay (1994 (73) ELT 425)
- (m). Kader Mydin vs Commissioner of Customs (Preventive), West Bengal (2001 (136) ELT 758),
- (n). Sapna Sanjeev Kohli Vs Commissioner of Customs, Airport, Mumbai 2008(230) ELT 305)
- (o). Vattakkal Moosa Vs Collector of Customs, Cochin (1994 (72) ELT 473,
- (p). Gauri Enterprises vs Commissioner of Customs, Pune [2002 (145) ELT 705 (Tri Bang)].

- (q). Kamlesh Kumar Vs CC reported in 1993 (67) ELT 1000 (G.O.1.)
- (r). Jt. Secretary in re. Jaspal Singh Banty 1994 (73) ELT 240 (GOI).
- (s). Hargovid Das K. Joshi & others Vs CC AIR 1987 SC 1982;
- (t). P. Sinnasamy vs. Commissioner of Customs, Chennai 2007(220) ELT 308 (Tri.Chennai).

Under the circumstances, the applicants have prayed to the Revision Authority to set aside the Order-in-Appeal no MUM-CUSTOM-PAX-APP-1158 & 19/2018-19 dated 28-2-19/6-3-19 and to release the gold under absolute confiscation on payment of appropriate duty, reasonable fine and penalty and also to drop further proceedings against them.

6. Personal hearings in the case was scheduled for 13.09.2022, 27.09.2022, 12.12.2022. Shri. Prakash Shingrani, Advocate appeared for personal hearing on 12.12.2022 and submitted that gold is not prohibited item. He further submitted statements were retracted by applicants. He submitted that goods be released on RF and penalty.

7. Government has gone through the facts of the case, written submissions, oral submissions etc. The fact remains that gold had been seized. A1 had admitted that the packet containing the gold bars, was kept by him on the sofa in the arrival hall. A1 had admitted that the gold had been handed over to him by A2 and that he had carried the gold for a monetary consideration. Noticing that the Customs were checking the crew members, and apprehending that he would get caught, A1 had panicked and kept the package containing the gold bars in the crevice of the sofa.

8. Government notes that though A1 had not cleared the Customs area, circumstantial evidence by way of CCTV footage was available hence, A1 could be traced. Subsequently, A2 came forward and claimed ownership of the gold bars. However, copies of the invoices etc was not available with him.

Subsequently, A1 disclaimed the narration made by A2 that while A1 was sleeping during the flight, he had placed the package in the handbag of A1. This statement has not been retracted by A1. It is clear that A1 had collaborated with the syndicate involved in the smuggling of the gold into India. He panicked at the sight of the crew members being checked by Customs on that particular day, hence, he kept the packet containing the gold bars on the sofa. As a responsible airline staff, he should have handed over the packet to Customs or at the lost and found counter at the airport. Since, the CCTV footage had picked up the act of A1, he had no choice, but to admit his role.

9. The financial investigations of A1 and A2 had come out with details that they were earning more income than their work profile. Though A2 has refuted the same by stating that the deposits were by way of cheques and not cash, the same lacks credibility. A1 had not been able to give a creditable account of the same.

10. A1 had attempted to make out a case that there were lot of discrepancies in the investigation and the evidence, However, the fact remains that there was credible evidence available by way of CCTV footage that he had handled the packet containing the gold. It is clear that A1 alongwith A2 were involved with a group / syndicate that was engaged in smuggling activity. Though, A1 had not cleared the gold out of the Customs area, by his actions, A1 had made himself liable for penalty under Section 112(a) and (b) of the Customs Act, 1962.

11. The facts and evidence indicates clearly that the gold bars had been brought in the aircraft and handed over by A2 and A1 too had admitted to this fact. It was clear that A2 had no intention to declare the gold bars and pay duty. Hence, Government finds that confiscation of the impugned gold

bars was justified. By their actions, A1 & A2 have rendered themselves liable to penal action.

12. 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”.

13. 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.

14. 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.

15. Government observes that the gold was in primary form. A1 and A2 had committed a premeditated act. Both A1 and A2 were acting for monetary benefit. It revealed their clear intention to evade duty and smuggle the gold into India. Though A2 has claimed ownership of the gold, the fact that

initially he had not responded to the summons indicates that he was not the owner of the gold and had claimed ownership as an afterthought. The circumstances of the case especially, quantum of gold, act of leaving the gold at the airport, primary form of gold, 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 Original Adjudicating Authority while absolutely confiscating the gold bars, weighing 1166 grams, valued at Rs. 28,06,673/-.

16. Insofar as the absolute confiscation of the gold bars is concerned, the Appellate Authority has rightly upheld the order passed by the OAA as legal and proper. For the reasons cited above, Government is not inclined to interfere in the absolute confiscation of the gold bars upheld by the AA.

17. Government notes that the averments made by the applicants in their revision applications had been raised before the OAA who has dealt with the same in great detail in the OIO. Government find the same as legal and proper and since the same has been dealt with eruditely, does not find it necessary to take up the same here.

18. Considering that A1 had left the gold bars at the airport and had not attempted to clear the same, Government finds that the penalty of Rs. 3,00,000/- imposed on him (A1) under Section 112(a) and 1(b) of the Customs Act, 1962 by the OAA and upheld by AA, is a bit harsh and unjustified and is inclined to reduce the same. Government finds that the penalty of Rs. 2,00,000/- imposed on A2 under Section 112(a) and 1(b) of the Customs Act, 1962 by the OAA which has been upheld by the AA is commensurate with the omissions and commissions committed by him.

19. For the aforesaid reasons, Government modifies the impugned Orders-In-Appeal MUM-CUSTOM-PAX-APP-1158 & 1159/2018-19 dated 28.02.2019 issued on 06.03.2019 through F.No. S/49-271/2017 passed by the AA only to the extent of reducing the penalty imposed on A1 under Section 112(a) and (b) of the Customs Act, 1962 from Rs. 3,00,000/ to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only). In other words, the absolute confiscation of the 10 gold bars of 10 tolas each, totally weighing 1166 grams, valued at Rs. 28,06,673/- and the quantum of penalty imposed on A2 under Section 112(a) and (b) of the Customs Act, 1962 are sustained.

20. The two Revision Applications are disposed of on the above terms.

Shrawan
3/13/23
(SHRAWAN KUMAR)

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

422-
ORDER NO. *423*/2023-CUS (WZ)/ASRA/MUMBAI DATED 31.03.2023

To,

1. Shri. Deepak Indramani Pandey, A-1506, Arunoday Tower, Konkan Nagar, Bhandup (West), Mumbai – 400 078.
2. Shri. Nabeel Anwar Shaikh, D-201, Sheetal Sagar, Sheetal Nagar, Near MTNL, Mira Road (East), Thane, Pin : 401 107.
3. Principal Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal – 2, Level – II, Sahar, Andheri (East), Mumbai – 400 099.

Copy to:

1. Shri. Prakash Shingrani, Advocate, 12/334, Vivek New MIG Colony, Bandra East, Mumbai – 400 051.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.