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GOVERNMENT OF INDIA  
 MINISTRY OF FINANCE  
 (DEPARTMENT OF REVENUE)  
 8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
 Mumbai-400 005

F.No. 373/165/B/15-RA / 3448

Date of Issue 28.02.2020

ORDER NO. <sup>45/2020</sup> CUS (SZ)/ASRA/MUMBAI DATED <sup>08.05.2020</sup> ~~12.2019~~ OF THE GOVERNMENT  
 OF INDIA PASSED BY SHRI SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-  
 OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER  
 SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Vishwas Polepalli Balawaradaraj Shetty

Respondent : Commissioner of Customs, Bangalore.

Subject : Revision Application filed, under Section 129DD of the  
 Customs Act, 1962 against the Order-in-Appeal No. 224/2015  
 dated 25.02.2015 passed by the Commissioner of Customs  
 (Appeals), Bangalore.



ORDER

This revision application has been filed by Shri Vishwas Polepalli Balawaradaraj Shetty (herein referred to as Applicant) against the order No. 196/2016 dated 15.03.2016 passed by the Commissioner of Customs (Appeals), Bangalore.

2. Briefly stated facts of the case are that the Officers of Customs intercepted Shri Vishwas Polepalli Balawaradaraj Shetty at the Kempegowda International Airport, Bangalore on 10.01.2014. A personal search resulted in the recovery of three gold chains totally weighing 350 gms worn by him. The Applicant also carried a pouch containing four small gold chains weighing 42.00 gms, a gold pendent and two earrings weighing 26 gms. The gold jewelry totally weighing 418 grams valued at Rs. 12,32,430/- ( Rupees Twelve Lacs Thirty two thousand Four hundred and Thirty ).

3. After due process of the law vide Order-In-Original No. 07/2014 dated 10.01.2014 the Original Adjudicating Authority ordered absolute confiscation of the gold under Section 111 (d) (l) and (m) of the Customs Act, 1962 and imposed penalty of Rs. 1,00,000/- (Rupees One lac Twenty Five thousand) under Section 112 (a) of the Customs Act, 1962. A penalty of Rs. 50,000/- ( Rupees Fifty Thousand ) was also imposed under section 114AA of the Customs Act, 1962.

4. Aggrieved by this order the Applicant filed an appeal with the Commissioner of Customs (Appeals), The Commissioner (Appeals) vide his order No. 224/2015 dated 25.02.2015 rejected the appeal of the Applicant.

5. Aggrieved with the above order the Applicant has filed this revision application interalia on the grounds that;

5.1 The order of the Commissioner (Appeals) is neither legal nor proper and hence liable to be set aside; The facts and submissions put forth in the Appeal were overlooked without cogent findings; The money with which the gold was purchased came from perfectly legal sources; The gold was purchased for the wedding of his brother and not for trading purposes; The Applicant was under the impression that gold upto five kgs could be brought duty free; It was only later that the Applicant realized that the five kgs allowed to be imported without an import licence did not apply to customs duty waiver; there is no merit in the impugned order holding that the goods are prohibited, besides the import of gold is not barred otherwise by any law in the country; As per the relevant regulations an individual passenger is allowed to bring gold up to 5 kgs and for quantity exceeding the upper limit alone approval from the competent authority is required to be obtained;



Considering the peculiar facts of the case there is no requirement of imposing any redemption fine and requirement of customs duty alone would suffice; Reliance is placed in the order of CESTAT in the case of Yakub Ibrahim Yusuf Vs Commissioner of Customs, Mumbai [2011 (263) ELT 685 ( Tri-Mumbai, and the order of Madras High Court in the case of T. Elavarasan Vs Commissioner of Customs [ 2011 (266) ELT 167 (Mad)] however they have been overlooked; In the era of liberalization, the market is flooded with imported gold due to relaxed Import policy and therefore every case of gold import cannot be treated as smuggling; Imposition of penalty of Rs. 2,00,000/- ( Rupees Two lacs ) is totally unjust and liable to be set aside.

5.2 The Revision Applicants prayed for leniency as regards to imposition of redemption fine and penalty.

6. In view of the above, personal hearings in the case were scheduled on 07.11.2019. Shri Pradyumna G. H. appeared on behalf of the Applicant and reiterated the grounds mentioned in the revision application and that the passenger is a qualified engineer based in Dubai. There was no mensrea and gold chains were worn by the Applicant and were brought for a wedding occasion. No one appeared on behalf of the Respondents.

#### FINDINGS AND ORDER

7. It is mandatory that any dutiable goods brought in by a passenger has to be declared to the Customs Officer under section 77 of the Customs, Act, 1962, having failed to do so, the confiscation of the gold is justified. However, Government notes that in the current liberalized scenario, gold is no longer prohibited, and therefore absolute confiscation cannot be resorted to for mere non-declaration. The gold chains weighing 350 grams were worn by the Applicant and the rest of the gold weighing 68gms was kept in a pouch carried by him. The Applicant is employed as an Engineer in Dubai has no recorded previous offences. As such absolute confiscation of the gold is harsh and unjust. The Hon'ble High Court of Madras in the case of T. Elavarasan Vs Commissioner of Customs has held that Gold is not a prohibited item and petitioner who has stayed abroad for more than six months is entitled to import gold – Option is available to the owner of the goods or person from whom the gold is seized to get the gold released on payment of Customs duty and penalty. The Apex court in the case of Hargovind Das K. Joshi v/s Collector of Customs reported in 1992 (61) E.L.T. 172 (S.C.), has pronounced that a quasi judicial authority must exercise discretionary powers in judicial and not arbitrary manner and remanded the case back for consideration under section 125(1) of the Customs Act, 1962. The gold brought by the Applicant was not concealed and therefore absolute confiscation in the case cannot be justified. Under the circumstances, the absolute confiscation of the gold is liable to be set aside.



9. In view of the above facts, Government sets aside the absolute confiscation of the gold and allows release of the gold on payment of Redemption fine of Rs.3,00,000/- ( Rupees Three lacs ). There are no grounds for reduction of penalty under section 112 of the Customs Act,1962. Penalty imposed is commensurate to the offence committed. Government however observes that once penalty has been imposed under section 112(a) there is no necessity of imposing penalty under section 114AA. The penalty of Rs. 50,000/- ( Rupees Fifty thousand ) imposed under section 114AA of the Customs Act,1962 is set aside.

10. Revision application is allowed on above terms.

11. So, ordered.

( SEEMA ARORA )

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

ORDER No. 45/2020 CUS (SZ) /ASRA/MUMBAI DATED 11.2019 08.05.2020.

To,

1. Shri Vishwas Polepalli Balawaradaraj Shetty, No. 664/1, Kumabarageri, \$th Cross, Chamaraja Mohalla, Mysore, Karnataka.
2. The Commissioner of Customs, Kempegowda International Airport, Bangalore..
3. M/s Pradyumna G. H. , Advocate BVC & Co. No. 371, 2<sup>nd</sup> Floor, 8<sup>th</sup> Main, Sadashiva Nagar, Bangalore-560 080.
4. Sr. P.S. to AS (RA), Mumbai.
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**ATTESTED**

B. LOKANATHA REDDY  
Deputy Commissioner (R.A.)

