

REGISTERED

SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 371/89-91/B/2022-RA/440 f

Date of Issue: 03.02.2023

ORDER NO. 497-499/2023-CUS (WZ)/ASRA/MUMBAI DATED 29.06.2023
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.

F.No. 371/89 - 91/B/2022-RA

Applicant No. 1 : Shri. Ramesh Pukhraj Bafna,
Applicant No. 2 : Smt. Umbaridevi Bafna,
Applicant No. 2 : Ms. Vijeta Bafna

} Applicants

Respondent : Pr. Commissioner of Customs, Ahmedabad.

Subject : Subject : Revision Application filed, under Section
129DD of the Customs Act, 1962 against the Orders-in-
Appeal Nos. MUM-CUSTOM-PAX-APP-1537 -
1539/2021-22 dated 19.01.2022 issued on
20.01.2022 through F.No. S/49-156,157 & 158/2021
passed by the Commissioner of Customs (Appeals),
Mumbai - III.

ORDER

These three revision applications have been filed by (i). Shri. Ramesh Pukhraj Bafna and (ii). Smt. Umbaridevi Bafna and (iii). Ms. Vijeta Bafna [hereinafter collectively, referred to as the Applicants or alternately and individually as Applicant No. 1 (A1), and Applicant No. 2 (A2) and Applicant No. 3 (A3), resp.] against the Orders-in-Appeal Nos. MUM-CUSTOM-PAX-APP-1537 – 1539/2021-22 dated 19.01.2022 issued on 20.01.2022 through F.No. S/49-156,157 & 158/2021 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2(a). Briefly stated the facts of the case are that the Applicants had been intercepted near the exit gate of Module – 2B, CSMI Airport on 11.09.2012 where they had arrived from Dubai onboard Spice Jet Airlines Flight No SG-0014 and had cleared themselves through the green channel. To query about possession of any dutiable items, the applicants had all replied in the negative. The personal search of the applicants led to the recovery of assorted gold / studded jewellery, totally weighing 762.103 grams valued at Rs. 19,09,421/- (i.e. 266.051 grams of gold jewellery, valued at Rs. 6,26,828/- was recovered from A1, 251.821 gms of gold jewellery valued at Rs. 6,50,995/- was recovered from A2 and 244.231 gms of gold jewellery valued at Rs. 6,31,598/- was recovered from was recovered from A3).

2(b). The applicants were arrested on 11.09.2012 and released on bail against Cash Bond of Rs. 1,00,000/- each.

3. The Original Adjudicating Authority viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide his Order-In-Original No. ADC/AS/ADJN/62/2012-13 dated 24.01.2013 had ordered for the absolute confiscation of the 762.103 grams of gold jewellery, valued at Rs. 19,09,421/- Sections 111(d), 111(i), 111(l) and 111(m) of the Customs Act, 1962. Penalty of Rs. 4,00,000/-, Rs. 2,00,000/- and Rs. 1,00,000/- were imposed on A1,

A2 and A3 resp., under Section 112 (a) and (b) of the Customs Act, 1962. Further, a penalty of Rs. 25,000/- each were imposed on A1, A2 and A3 resp., under Section 114AA of the Customs Act, 1962.

4. Aggrieved by the said order, the applicants filed appeals before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide Order-in-Appeal bearing nos. S/49-353, 355 and 357 AO Stay dated 29.09.2013 directed the applicants to pay the pre-deposit amount of Rs. 2,00,000/- Rs. 1,00,000/- and Rs. 1,00,000/- resp. Subsequently, the Commissioner (Appeals) by Order-in-Appeal dated 18.11.2013 dismissed all the three appeals under Section 129E of the Customs Act, 1962 for non-compliance of the directions for payment of the said pre-deposit amounts.

5. Being aggrieved with the aforesaid Order dated 18.11.2013 passed by the appellate authority, the applicants filed a Revision Application before the Revisionary Authority. The Government vide its Order No. 18-29/2017-CUS(WZ)/ASRA/Mumbai dated 20.12.2017 ordered the applicants to deposit the amount of Rs. 50,000/-, Rs. 25,000/- and Rs. 25,000/- resp., and remanded the case back to the Appellate Authority for a decision.

6. The Appellate Authority viz, Commissioner of Customs (Appeal), Mumbai – III vide the Order-in-Appeal no. MUM-CUSTM-PAX-APP-1041/17-18 dated 23.02.2018 allowed the applicants to re-export the gold jewellery on payment of a redemption fine of Rs. 2,00,000/- under Section 125 of the Customs Act, 1962 and also reduced the penalty to Rs. 75,000/-, Rs. 50,000/- and Rs. 25,000/- resp., imposed under Section 112 of the Customs Act, 1962 by the OAA. Further, the penalty imposed on the applicants under Section 114AA of the Customs Act, 1962 was set aside.

7(a). Thereafter, it was alleged by the applicants that they had immediately approached the Office of the Air Intelligence Unit (AIU), CSMI Airport,

Mumbai to obtain the said confiscated goods on payment of redemption fine. It was alleged that the applicants had been informed that the order dated 23.02.2018 passed by the AA was first required to be accepted by the department and then only the same (i.e. orders in the OIA) could be implemented. Also, the applicants were informed that the matter of prosecution against them was pending for decision and hence the goods could not be released.

7(b). It was alleged by the applicants that since no communication from the department was forthcoming about the acceptance of the order and also about the launching of prosecution, they filed a Refund application dated 27.08.2018 for refund of the bail deposits amounting to a total of Rs. 3,00,000/-. A deficiency memo dated 05.10.2018 was issued by the department to submit various documents which was submitted by the applicants on 29.03.2019.

7(c). It is alleged by the applicants that since no response was received from the department, a reminder dated 04.04.2019 was sent for the refund of the said bail amount. Thereafter, it was alleged by the applicants that they had attempted to deliver a letter dated 27.06.2019 to the AIU, Mumbai for redemption of the goods. Pay Orders obtained from HDFC Bank for amount of Rs. 2,00,000/- as redemption fine and Rs. 50,000/-, Rs. 25,000/- and Rs. 25,000/- too had been enclosed in the said letter dated 27.06.2019. However, it was alleged that the said letter was not accepted and they were made to delete the portion where a reference had been made for deposit of the pay orders. It was alleged by the applicants that while rejecting the said three pay orders they were informed that since an amount of Rs. 3,00,000/- was due to them from the department, nothing was payable by them in case this amount was ordered to be returned. It was further alleged that the applicants had been informed that should the department not decide to launch the prosecution against them then the confiscated goods would be available to

them for redemption and subsequent re-export and total deposits of Rs. 3,00,000/- would be adjusted towards any dues from them.

7(d). Thereafter, the Joint Commissioner of Customs, Air Intelligence Unit (AIU), Mumbai passed an Order dated 12.01.2021 holding that since the applicants had not paid the redemption fine within 120 days from the date of communication of the Order-in-Appeal dated 23.02.2018 passed by the AA, their request for re-export on payment of a redemption fine, was rejected.

7(e). The details mentioned at paras 7(a) to 7(d) above are as per the OIA dated 19.01.2022 and paras 7(a) and 7(c) appear to be mostly oral averments made by the applicants.

8. Aggrieved by the said order dated 12.01.2021 passed by the Joint Commissioner of Customs, AIU, Mumbai, the applicants filed appeals before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai – III who vide Order-in-Appeal Nos. MUM-CUSTOM-PAX-APP-1537 – 1539/2021-22 dated 19.01.2022 through F.No. S/49-156,157 & 158/2021 held as follows

(a). The prayer of the applicants to set aside the impugned order / letter dated 12.01.2021 of Joint Commissioner of Customs, AIU, CSMI, Mumbai and (b). prayer for order permitting the redemption of the confiscated goods by adjusting the deposit of bail amount already made against the redemption fine, was dis-allowed in terms of Section 125(3) of the Customs Act, 1962, ;

(c). Also, the pre-deposit amount deposited by the applicants totaling Rs. 1,00,000/- was ordered to be adjusted and appropriated against the total personal penalty of Rs. 1,50,000/- imposed on them. The balance amount of Rs. 50,000/- was made recoverable from the applicants.; (d). the issue of pre-deposit of bail amount of Rs. 3,00,000/- was to be resolved separately.

9. Aggrieved with the above order dated 19.01.2022 passed by the AA, the 3 applicants have filed these 3 revision applications on the following grounds; The grounds of appeal for the three applicants are almost identically worded, hence, the relevant and common features are taken together here below;

- 9.01. that the AA had erred in holding that the main issue in the matter was applicability of Section 125(3) of the Customs Act, 1962, while the main issue was whether the department was competent to permit the applicants to exercise the redemption fine.
- 9.02. that the AA had erred in holding that having preferred a refund application, the applicants had exhibited their unwillingness to redeem the goods; that filing the refund application had not changed the legal position; that till date prosecution had not been launched and thus, there was a bar on the department to consider the question of redemption of the goods;
- 9.03. that the AA had erred in holding that the reply / documents received under RTI did not relate to the order passed to redeem the goods under Section 125(3) of the Customs Act, 1962.
- 9.04. that instructions issued in the CBEC circulars No. 27/2015-Cus dated 23.10.2015 and F.No. 394/71/97-CUS (AS) dated 22.06.1999 on the issue of launching of prosecution had not been followed.
- 9.05. that the AA had failed to understand the issue in the right perspective and had presumed that they were attempting to get an extension of the period permissible for redemption; that they had at no stage requested for condonation of delay; that the department had to first remove the bar for disposing the goods and then only the question of allowing the redemption came into the picture; that having not decided on the issue of launching of prosecution, the time limit had not even started;
- 9.06. that the AA had failed to consider the applicability of the provisions of Cr.P.C especially code no. 451, 452 and 452 on the issue of Custody and disposal of property pending trial, disposal of property at conclusion of trial, procedure by police upon seizure of property.
- 9.07. that the aforesaid codes of Cr. P.C indicates that in case department launches prosecution proceedings, the seized property is at the disposal of the Court and that without the Court's Order the same cannot be disposed.
- 9.08. that they have relied upon the undermentioned case laws,
 - (a). Delhi High Court Order dated 17.10.2008 in the matter of Cus. A.C. 6/2008 & Cus. A.C. 9/2008 of Commissioner of Customs, ICD, TKD vs. J.S Gural and Anr.
 - (b). ITAT decision dated 29.04.2019 in the case of Jindal Steel and Power Ltd vs. Asstt. Commr of IT 9ITA No. 893/Del/2014.
 - (c). Decision of Hon'ble Madras High Court dated 22.09.2021 in the matter of Gupta & Sons vs. UOI (W.P. No. 17800 of 2015),

(d). Decision of Hon'ble Jharkhand High Court dated 08.12.2021 in the matter of Om Prakash Garg vs. Jharkhand Bijli Vitran Nigam & Otrs. [LPA No. 748/2019],

(e). Decision of Hon'ble Supreme Court dated 17.09.1987 in the matter of Raj Kumar Dey and Ors vs. Tarpada Dey and Ors [Civil Appeal No. 2224 / 1987].

9.09. the AA had failed to consider the dual control over the seized goods by the competent court as well as the Customs Adjudicating Authority; that the goods cannot be disposed without the order of the court even if the same are held liable to confiscation in the adjudication proceedings. Here, reliance is placed on the decision of the Hon'ble Bombay High Court Order in the matter of Mohanlal Devdanbhai Choksey and Otrs vs. M.P Mondkar and Otrs [1988(37) ELT 528(Bom)]

Under the aforesaid circumstance, the applicants have prayed to set aside the impugned order of the OIA dated 19.01.2022 and to direct the adjudicating authority to await the decision of the Pr. Chief Commr. Of Customs, Mumbai Zone – III and to offer the redemption option only when the goods are free to be disposed.

10. Personal hearing in the case was fixed for 11.04.2023. Shri. Lilesh Sawant, Advocate appeared for hearing on 11.04.2023 and submitted that they had immediately approached jurisdictional Commissionerate and had verbally requested to release the goods as per Commissioner (A) Order. He further submitted that applicant was informed by the department that unless OIA is accepted no request can be entertained. He requested to pass a fresh order as applicants were not aware and delay in making request in writing happened inadvertently.

11(a). The Government has gone through the facts of the case, written submissions, documents especially those received by them under RTI application, oral submissions during personal hearing, records such as OIO, OIAs etc. Government notes that by Order-in-Appeal no. MUM-CUSTOM-PAX-APP-1041/17-18 dated 23.02.2018 passed by the Commissioner of Customs

(Appeals), Mumbai – III, the gold jewellery brought in by the applicants had been ordered to be re-exported on payment of a redemption fine of Rs. 2 Lakhs and the penalty imposed had been reduced, substantially. It is informed that this OIA dated 23.02.2018 has been accepted by the respondent. Therefore, it is clear that the issue has gained finality.

11(b). Thereafter, the applicants ought to have approached the respondent for the release of the gold jewellery for re-export by paying the redemption fine and the reduced penalties. However, Government notes that this was not the case.

11(c). The applicants vide their letter dated 27.08.2018, approached the respondents for refund of their bail amounts paid by them on 12.09.2012. The applicants informed that they had complied with the deficiency memo raised by the respondent and had also put in a reminder. Since, no reply was forthcoming, the applicants vide their letter dated 27.06.2019 approached the respondent office for re-export of the impugned gold jewellery i.e. 762 grams. The applicants had followed up this letter with another letter (reminder) dated 5.12.2019 for re-export of the gold jewellery.

11(d). Government notes that the respondent had not replied to the letters dated 27.08.2018, 27.06.2019 and 05.12.2019 filed by the applicants but had been taken up in the note-sheets as seen in the RTI reply. Thereafter, the respondent office vide their letter no. SD/INT/AIU/117/2012 AP A dated 12.01.2021, disallowed the request of the applicants for re-export of the 762 grams of jewellery on the grounds that their application was filed beyond the time limit of 120 days as stipulated under Section 125(3) of the Customs Act, 1962.

12(a). From a perusal of the chronology of events in the case, it is clear that this is a protracted issue. Government notes that after the OIA dated 23.02.2018 was passed, the applicants first approached the respondent only on 27.08.2018, which is nearly 180 days after having obtained a favourable Order for

redemption of the impugned jewellery. Rest of the submissions made by the applicant of having approached the department and having been informed that acceptance of OIA was pending etc, seems to be oral in nature and not backed by any document. Moreover, it is noticed that this letter was for refund of the bail amounts deposited with the respondent. Nowhere in the said letter, the applicants had stated that they intend to redeem the impugned gold. Thereafter, on the issue of redeeming the gold, the first written communication was filed by the applicants only on 27.06.2019, which is nearly, 489 days after the OIA dated 23.02.2018 in which redemption had been allowed was passed. In this letter, the applicants have stated that the OIA dated 23.02.2018 was accepted by the department on 14.06.2018 and that no litigation was pending. The applicants thereafter have relied on the note-sheets which were obtained by them under RTI application and have stated that the respondent itself was considering the release of the impugned gold. Government notes that this was the deliberations before arriving at a decision which culminated finally with the denial of the request made by the applicants. Government finds that the reliance placed by the applicants on the contents received through the RTI reply is misplaced.

12(b). Government notes that even in the revision application, the applicants have not produced a single instance / document which indicates that they had approached the department within 120 days of the OIA dated 23.02.2018. Such a piece of evidence would have come to the rescue of the applicants. However, in the absence of any document forthcoming from the applicants that they had indeed approached the department within 120 days of the OIA dated 23.02.2018, the Government notes that the observation of the AA at para 6.2 of the OIA dated 19.01.2022 based on the chronology of events cannot be faulted.

13.01. The Section 125 of the Customs Act, 1962 is reproduced below;

Section 125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised by this Act, the officer

adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods ¹ [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

² [**Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, ³ [no such fine shall be imposed]:

Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

⁴ [(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

⁵ [(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation .-For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

13.02. A plain perusal of the provision of Section 125(3) of the Customs Act, 1962 indicates that the same comes into effect in tandem with sub-section (1). i.e when sub-section (1) is allowed, it goes without saying that the payment of the redemption fine is required to be availed within a period of 120 days from the option having been granted. Section 125(3) is a subset of Section 125 and the option to pay fine in lieu of confiscation is available under Section 125 of the Customs Act, 1962.

13.03. Besides, it is seen that no appeal had been filed after the OIA dated 23.02.2018 and applicants had approached the department for release of the gold jewellery only on 27.06.2019 which is nearly 489 days later.

13.04. The applicants should have made adequate and timely arrangement to avail the redemption of the seized gold. The law does not come to the aid of the indolent, tardy litigant. It is the bounden duty of the one seeking relief to avail the relief granted under the law within the specified time limit. The applicant has himself to blame. The statutory requirement to avail the redemption is 120 days and the respondent has rightly rejected the claim made by the applicant. The adjustments of the amount paid has been granted to the applicants by the AA. Government notes that the applicants had approached the respondent for redemption of the gold in terms of the OIO dated 23.02.2018 much beyond the period of 120 days and had exceeded the threshold period stipulated in the law. Government finds that the respondent has rightly denied the applicants to redeem the seized gold which has been correctly upheld by the AA who has correctly relied upon the settled case laws on the subject.

13.05. Government finds that the averments raised by the applicants in their revision applications that the goods cannot be released as the prosecution has not yet been launched is fallacious interpretation of the law and at best can be termed as an attempt used by the applicants to cover their lapse of approaching the department beyond the stipulated time period.

13.06. Government also relies on the judgement dated 23.04.2019 passed by the Hon'ble Delhi High Court in W.P (C) No. 1735 /2016, C.M. APPL. No. 7433/2016 pertaining to M/s. Gillette India Ltd. Vs. Commr. Of Customs & Otrs., which it finds is also applicable to this case.

14. For the aforesaid reason, Government finds that the Orders-in-Appeal Nos. MUM-CUSTOM-PAX-APP-1537 – 1539/2021-22 dated 19.01.2022 issued on 20.01.2022 through F.No. S/49-156,157 & 158/2021 passed by the Commissioner of Customs (Appeals), Mumbai - III is proper and legal and the Government does not find any reason to interfere in the same. The three revision applications filed by the applicant fails.

15. Accordingly, the three revision applications filed by the applicants are hereby, dismissed.

Shrawan
28/6/23
(SHRAWAN KUMAR)

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

ORDER NO. 497-49/2023-CUS (WZ)/ASRA/MUMBAI DATED 28.06.2023

To,

1. Shri. Ramesh Pukhraj Bafna, A-41, Bharat Nagar, D.B Marg, M.S. Ali Road, Grant Road, Mumbai – 400 007.
2. Smt. Umbaridevi Bafna, A-41, Bharat Nagar, D.B Marg, M.S. Ali Road, Grant Road, Mumbai – 400 007.
3. Ms. Vijeta Bafna, A-41, Bharat Nagar, D.B Marg, M.S. Ali Road, Grant Road, Mumbai – 400 007.
4. Pr. Commissioner of Customs, Chhatrapati Shivaji Maharaj International Airport, Level – II, Terminal – II, Sahar, Andheri (West), Mumbai – 400 099.

Copy To,

1. Lilesh Sawant & Associates, A-223, Gokul Arcade, Near Garware House, Subhash Road, Vile Parle (East), Mumbai – 400 057.
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy,
4. Notice Board.