



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

F.No. 371/109/B/WZ/2020-RA : Date of Issue: 05.07.2023
F.No. 371/110/B/WZ/2020-RA / 4443

ORDER NO. ⁵¹⁴⁻⁵¹⁵ /2023-CUS (WZ)/ASRA/MUMBAI DATED 30.06.2023
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.

Applicant No.1: Shri. Rahat Ali

Applicant No.2: Shri. Waeem Akram

Respondent : Pr. Commissioner of Customs, Custom House,
Near Akashwani, Navrangpura, Ahmedabad 380 009.

Subject : Revision Application filed, under Section 129DD of the
Customs Act, 1962 against the Order-in-Appeal No. AHD-
CUSTM-000-APP-554-555-19-20 dated 10.01.2020 issued
through F.No. S/49-479-480/CUS/AHD/18-19 passed by
the Commissioner of Customs (Appeals), Ahmedabad.

in CMA No. 1638 of 2008 passed by the Madras High Court. the corroborative facts had not been mentioned by the OAA.

- 5.04. that the lower authorities had arrived at erroneous conclusions and had failed to exercise the discretion as per the canons laid down in said judgement of P. Sinnasamy.
- 5.05. that the applicant relies on the following case laws where redemption had been granted,
- (a). Yakub Ibrahim Yusuf Vs CC, Mumbai 2011 (263) ELT 685 (Tri - Mumbai),
 - (b). Shaik Jamal Basha V. Government of India (1997(91) E.L.T. 277 (A.P.)
 - (c). V.P.Hamid Vs Commissioner of Customs, 1994(73) ELT 425 (Tri)
 - (d). T.Elavarasan vs The Commissioner of Customs 2011-266-ELT-167-Mad.
 - (e). Union of India v. Dhanak M. Ramji - 2010 (252) E.L.T. A102 (S.C.)
- 5.06. that no offence had been committed and the penalty imposed was high and not commensurate with the misdemeanor.

Under the above facts and circumstances of the case, the Applicant has prayed that the Revision Authority be pleased to hand over the goods on payment of duty or allow to re-export the goods and drop the penalty or reduce it to reasonable level or pass any such order as deemed fit.

6. Personal hearing through the online video conferencing mode was scheduled for 11.05.2023. Shri. Rishikesh Mehra, Advocate appeared online for personal hearing on 11.05.2023 and submitted that there is no ingenious concealment. He requested to release the gold on reasonable redemption fine and penalty.

7. The Government has gone through the facts of the case and notes that in this case Applicant 2 arrived from Dubai with the impugned gold bars and handed over the same to Applicant 1 who is a domestic passenger to evade payment of Customs duty. Both the Applicants failed to declare the goods in

their possession as required under Section 77 of the Customs Act, 1962. Government notes that in this case both the applicants have knowingly tried to smuggle the gold without payment of Customs duty. Applicant 2 had not disclosed that he was carrying dutiable goods when he entered the Customs area and Applicant 1 though he is a domestic passenger did not declare that he had gold of foreign markings. Had they not been intercepted, they would have walked away with the impugned gold bars without declaring the same to Customs and paying the applicable Customs duty. By their actions, it was clear that the applicants had intention to smuggle the impugned gold without declaring to Customs and to evade payment of Customs duty on it. The Government finds that the confiscation of the gold jewellery, was therefore, justified.

8.1 The relevant sections of the Customs Act are reproduced below:

Section 2(33)

"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with"

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 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 :*

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-

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.

10. A plain reading of the section 125 shows that the Adjudicating Authority is bound to give an option of redemption when goods are not subjected to any prohibition. In case of prohibited goods, such as, the gold, the Adjudicating Authority may allow redemption. There is no bar on the Adjudicating Authority allowing redemption of prohibited goods. This exercise of discretion will depend on the nature of the goods and the nature of the prohibition. For instance, spurious drugs, arms, ammunition, hazardous goods, contaminated flora or fauna, food which does not meet the food safety standards, etc. are harmful to the society if allowed to find their way into the domestic market. On the other hand, release of certain goods on redemption fine, even though the same becomes prohibited as conditions of import have not been satisfied, may not be harmful to the society at large. Thus, Adjudicating authority can allow redemption under Section 125 of any goods which are prohibited either under the Customs Act or any other law on payment of fine.

11.1 Government further observes that there are a catena of judgements, over a period of time, of the Hon'ble Courts and other forums which have been categorical in the view that grant of the option of redemption under Section 125 of the Customs Act, 1962 can be exercised in the interest of justice. Government places reliance on some of the judgements as under:

- a) In the case of Commissioner of Customs, Aliganj, Lucknow vs. Rajesh Jhamatmal Bhat, [2022(382) E.L.T. 345 (All)], the Lucknow Bench of the Hon'ble High Court of Allahabad, has held at Para 22 that "Customs Excise & Service Tax Appellate Tribunal Allahabad has not committed any error in upholding the order dated 27.08.2018 passed by the Commissioner (Appeals) holding that Gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act."
- b) The Hon'ble High Court of Judicature at Madras, in the judgment in the case of Shik Mastani Bi vs. Principal Commissioner of Customs, Chennai-I [2017(345) E.L.T. 201 (Mad)] upheld the order of the Appellate Authority allowing re-export of gold on payment of redemption fine.
- c) The Hon'ble High Court of Kerala at Ernakulam in the case of R. Mohandas vs. Commissioner of Cochin [2016(336) E.L.T. 399 (Ker.)] has observed at Para 8 that "The intention of Section 125 is that, after adjudication, the Customs Authority is bound to release the goods to any such person from whom such custody has been seized..."
- d) Also, in the case of Union of India vs Dhanak M Ramji [2010(252) E.L.T. A102(S.C)], the Hon'ble Apex Court vide its judgement dated 08.03.2010 upheld the decision of the Hon'ble High Court of Judicature at Bombay [2009(248) E.L.T. 127 (Bom)], and approved redemption of absolutely confiscated goods to the passenger.

11.2 Government, observing the ratios of the above judicial pronouncements, arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case.

12. In the instant case, Government, notes that the impugned gold was not ingeniously concealed, they were found from the trouser pocket of Applicant 1. A case that the Applicants were habitual offenders had not been made out. Basic contention is that the gold had been handed over by Applicant 2 i.e. from an International passenger to Applicant 1 who was a domestic passenger. Government finds that later on, Applicant no.2 had admitted that he had bought the gold from abroad and also admitted that he had handed over the same to Applicant 1. The quantum of gold involved is small (only 845.980 grams) and is not of commercial quantity. The quantum of the same does not suggest the act to be one of organized smuggling by a syndicate. Considering the issue of parity and fairness as mentioned above, Government finds that this is a case of non-declaration of gold. Considering the afore-stated facts, various judgements submitted by applicant, absolute confiscation is not warranted and allowing redemption of gold on fine would be judicious and reasonable. Observing the ratios of the judicial pronouncements cited above, Government arrives at the conclusion that decision to grant the option of redemption would be appropriate in the facts and circumstances of the instant case.

13. The absolute confiscation of the gold, leading to dispossession of the applicant of the gold in the instant case is therefore, harsh and not reasonable. In view of the above facts, Government is inclined to modify the absolute confiscation upheld by the AA and allow the impugned gold bars to be redeemed on payment of redemption fine.

14.1 In view of the above Government modifies the impugned order of the appellate authority and allows the applicant to redeem the impugned gold

bars i.e 7 gold bars and 1 cut gold bar with foreign markings, having a purity of 999.0, totally weighing 845.980 grams and having a market value of Rs.26,69,913/- and tariff value of Rs.23,59,058/-, on payment of redemption fine of Rs. 5,00,000/- (Rupees Five Lakh only).

14.2 The Government finds that the penalty of Rs. 2,35,000/- imposed on each of the applicant under Section 112(a) & (b) of the Customs Act, 1962 being appropriate and commensurate with the omissions and commissions of the Applicant, Government does not feel it necessary to interfere with the imposition of the same.

15. Revision Application is disposed of on the above terms.


(SHRAWAN KUMAR)

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

ORDER NO. ⁵¹⁴⁻⁵¹⁵ /2023-CUS (WZ)/ASRA/MUMBAI DATED 30.06.2023.

To,

1. Shri. Rahat Ali, Makan No.17, Chak No. 12, Tehsil: Tanda, District: Rampur, Uttar Pradesh-244925.
2. Shri. Waseem Akram, House No. 145, Mohalla Tandoli, PO & Tehsil: Tanda, District: Rampur, Uttar Pradesh-244925.
3. Pr. Commissioner of Customs, Custom House, Near Akashwani, Navrangpura, Ahmedabad 380009.

Copy to:

1. Shri Rishikesh Mehra, Advocate, B/1103, Dev Vihaan, Behind Third Eye Residency, Opp. Motera Stadium, Sabarmati, Ahmedabad-380005.
2. Commissioner of Customs (Appeals), Ahmedabad, 7th Floor, Mridul Towers, B/H Times of India, Ashram Road, Ahmedabad 380009
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.