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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

8<sup>th</sup> Floor, World Trade Centre, Centre - I, Cuffe Parade,  
Mumbai-400 005

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F.No. 371/159A & 159B/WZ/2021-RA / 4438 : Date of Issue : 04.07.2023

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ORDER NO. <sup>516-517</sup> /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.

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Applicants : (i). Ms Saba Parveen Irfan Khan,  
(ii). Shri Anwar M. T.

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

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Orders-in-Appeal Nos.  
MUM-CUSTM-PAX-APP-2098/2020-21 dated 25-03-21  
issued on 30.03.2021 through F.No. S/49-924/2019  
passed by the Commissioner of Customs (Appeals),  
Mumbai - III.

**ORDER**

These revision applications have been filed by (i). Ms Saba Parveen Irfan Khan and (ii). Shri Anwar M. T. (herein after referred to as the Applicants or alternately as Applicant no. 1 and Applicant no. 2 respectively) against the Order-In-Appeal Nos. MUM-CUSTOM-PAX-APP-2098/2020-21 dated 25.03.2021 issued on 30.03.2021 through F.No. S/49-924/2019 passed by the Commissioner of Customs (Appeals), Mumbai - III.

2.1 Brief facts of the case are that on 18.01.2019, the Officers of AIU at CSMI Airport, Mumbai had intercepted the Applicant No.1 viz Ms Saba Parveen Irfan Khan holding Indian Passport No. L 6927800, upon her arrival from Sarjah by Flight No. IX-252 dated 31-03-2018, after she had cleared Customs through the green channel and were proceeding to the exit gate. On personal search of the Applicant No. 1, it was found that she was wearing on brown coloured cloth belt fastened around her abdomen. The belt was cut open which resulted in recovery of brown coloured powder with water pasted in glue, purported to containing gold, cleverly concealed in plastic pouch. The passenger revealed that the same had to be handed over to a person who will identify her and collect the said brown coloured cloth belt. The officers along with the Applicant No. 1 and panchas caught the person ie Applicant 2 viz Shri Anwar M.T. when he came forward to meet the Applicant No. 1 and collect the goods.

2.2 The Govt. Approved Valuer assayed and declared that the recovered brown coloured powder contains Gold dust having purity 999% gold weighing 2800grams (gross) and approximate weight of the gold dust to be 1680 grams and provisionally valued at Rs.47,09,174/-.

2.3 Subsequently, the gold dust in powder form was forwarded by the respondent to India Government Mint, Mumbai for converting the same into gold bars which certified that the weight of the gold bars weighing 1417.6189 grams with purity of 994.40% and 01 muster weighing 19.1384 grams with purity of 981.40%, totally weighing 1478.3415 grams and was finally valued at Rs.41,07,735/-.

3. The Original Adjudicating Authority viz, Addl. Commissioner of Customs, CSMI Airport, Mumbai vide Order-In-Original No. ADC/AK/ADJN/76/2019-20 dated 25.06.2019 ordered for the absolute confiscation of the seized gold weighing 1478.3415 grams and valued at Rs.41,07,735/- under Section 111(d), (l) and (m) of the Customs Act, 1962 and imposed a personal penalty of Rs. 4,50,000/- and Rs. 50,000/- on the Applicant<sup>1</sup> and Applicant 2 respectively under Section 112(a) and (b) of the Customs Act, 1962.

4. Aggrieved by the said order, applicants filed appeals before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai - III, who vide his Orders-In-Appeal Nos. MUM-CUSTOM-PAX-APP-2098/2020-21 dated 25.03.2021 issued on 30.03.2021 through F.No. S/49-924/2019, did not find any reason to interfere in the impugned OIO passed by the OAA.

5. Aggrieved with the above order, the Applicants have filed these revision applications on the following grounds:

5.1 That the Commissioner Appeal's impugned Order dated 25-03-2021 is not a speaking order in as much as the AA has failed to take cognizance of all the submissions made by the petitioners without giving any reason;

5.2 That the points which were not discussed are as under

- i) No valid seizure was made and there was no seizure order issued by the Investigating agency. Therefore proposal for confiscation of goods is not sustainable and no penalty can be imposed;
- ii) Criminal nexus between the Applicant no. 1 & 2 has not been proved;
- iii) That the allegation against the Applicant No. 1 that she was a carrier of the goods is based only on presumption. The case against her that she is a carrier is not proved beyond reasonable doubt;
- iv) That Applicant 2 was not involved in any smuggling activity, his statements were exculpatory and that he is not liable for any penal action.

5.3 The statement of Applicant 1 dated 31-03-2018 was involuntary and against the truth and hence it should not have been relied upon.

5.4 *Gold is not a prohibited item and not liable for absolute confiscation.*

5.5 The decisions relied by the applicants were rejected by the AA without application of mind and the decisions relied by the AA are not applicable to their case.

5.6 That provisions of Notification No.50/2017 dated 30-06-2017 cannot be made applicable in this case.

5.7 Penalty imposed on the Applicant No.1 under Section 112(a) & (b) of the Customs Act is disproportionate to the value of the goods confiscated.

5.8 Applicant 1 claimed ownership of the goods and requested for redemption of the gold on reasonable fine and penalty.

The Applicant No. 1 concluded that she was falsely implicated in the case as a carrier and requested to release the confiscated gold on payment of reasonable fine, penalty and duty.

The Applicant no. 2 summarized that he was falsely implicated in the case of smuggling and submitted that the penalty imposed on him is not sustainable.



6. Personal hearings in the case was scheduled on 23-05-2023. Shri. Prakash Shingarani, Advocate appeared for personal hearing and submitted that the applicants brought gold for the marriage purpose, the same was not for commercial purposes and that the applicant is not a habitual offender. He requested to allow the option to redeem the goods on reasonable fine and penalty.

7. The Government has gone through the facts of the case. The Applicant No.1 was intercepted when she had attempted to walk through the green channel. The impugned gold was in the form of brown coloured powder with water pasted in glue, kept in plastic pouch, in a brown cloth belt. The Applicant No.1 had not declared the impugned gold as required under section 77 of the Customs Act, 1962. By this action, it is clear that applicants had no intention to pay the Customs duty. The confiscation of the gold is therefore justified and thus, the Applicants had rendered themselves liable for penal action.

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 Applicants 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. 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.

12.1 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.



12.2. 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.

13. Government notes that the quantity of impugned gold dust (converted into bars) under import, is neither substantial nor in commercial quantity. The Applicant claimed ownership of the impugned gold and stated that the same was brought for marriage purpose. There are no other claimants of the said gold. There is no allegation that the applicants are habitual offenders and was involved in similar offence earlier. The facts of the case indicate that it is a case of non-declaration of gold, rather than a case of smuggling for commercial considerations. The absolute confiscation of the impugned Gold, leading to dispossession of the Gold in the instant case is therefore harsh and not reasonable. Government considers granting an option to the Applicant to redeem the Gold on payment of a suitable redemption fine, as the same would be more reasonable and judicious.

14. In view of the above, the Government modifies the impugned order of the Appellate Authority in respect of the impugned Gold seized from the Applicant. The seized Gold from the Applicant 1 i.e. impugned gold bars weighing 1417.6189 grams with purity of 994.40% and 01 muster weighing 19.1384 grams with purity of 981.40%, totally weighing 1478.3415 grams and totally valued at Rs.41,07,735/- is allowed to be redeemed on payment of a fine of Rs. 8,10,000/- (Rupees Eight Lakh Ten Thousand only).

15. The Government finds while imposing penalties on A1 and A2 under Section 112(a) and (b) of the Custom Act, 1962, the lower authorities have considered the role played by each of them in the smuggling activity and had imposed a penalty of Rs. 4,50,000/- on Applicant 1 and a lower quantum of Rs. 50,000/- on Applicant 2. Government finds that the penalty imposed on A1 for the gold valued at Rs. 41,07,735/- and penalty imposed on A2 is

commensurate with the omissions and commissions committed by him and is therefore, not inclined to interfere in the same.

16. Accordingly, the Revision Applications is disposed on the above terms.

*Shrawan*  
30/6/23  
( SHRAWAN KUMAR )

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

S16-S17  
ORDER NO. /2023-CUS (WZ)/ASRA/MUMBAI DATED 30.06.2023

To,

1. Ms Saba Parveen Irfan Khan, 2<sup>nd</sup> floor, Room No. 29, Sugra Manzil, Achole Road, Opp Bori Masjid, Nalla Sopara (East), Thane-401209
2. Mr. Anwar, Mallikathodukayil (H), Vavad (PO), Kozhikode, Kerala-673001
3. Principal Commissioner of Customs, Chhatrapati Shivaji International Airport, Terminal - 2, Level - II, Sahar, Andheri (East), Mumbai - 400 099.

Copy to:

1. Shri. Prakash K. 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.