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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. 371/102/B/2021-RA / 4540 :

Date of Issue: ~~06.06.2023~~  
06.08.2023

ORDER NO. 521 /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.

Applicants : Mr. Abdul Khadir Muazzam

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

Subject : Revision Application filed, under Section 129DD of the  
Customs Act, 1962 against the Order-in-Appeal No.  
MUM-CUSTM-PAX-APP-887/2020-21 dated 22.01.2021  
[F.No. S/49-445/2019] [Date of issue: 08.02.2021]  
passed by the Commissioner of Customs (Appeals),  
Mumbai-III.

**ORDER**

This Revision Application has been filed by Mr. Abdul Khadir Muazzam (*herein referred to as the "Applicant"*) against the Order-in-Appeal No. MUM-CUSTOM-PAX-APP-887/2020-21 dated 22.01.2021 [F.No. S/49-445/2019] [Date of issue: 08.02.2021] passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. Brief facts of the case are that on 22.01.2018, the Officers of AIU at CSI Airport, Mumbai, on the basis of suspicion, intercepted one passenger Mr. Abdul Khadir Muazzam, the applicant, holding Indian passport number N4582537 after he had cleared himself through Green channel of Customs, CSI Airport, Mumbai. He had arrived from Dubai by Jet Airways Flight No. 9W 0579. Detailed examination of his 02 checked-in baggage resulted in recovery of silver coated metal wires in both the baggage concealed in the inner lining of the bag. The silver coated wires weighed 589 grams. The Government approved valuer examined and assayed the said wires and gave his report that the 589 grams of silver coated wires were made of Gold having purity of 999% 24KT and valued at Rs.16,29,739/-. The impugned gold was seized in the reasonable belief that the same was being smuggled into India and hence liable for confiscation of the provisions of the Customs Act, 1962. Subsequently, Show Cause Notice was issued on 18-07-2018 wherein the impugned gold was proposed to be confiscated and penalty to be imposed under the provisions of the Customs Act, 1962.

3. The Original Adjudicating Authority (OAA) viz the Additional Commissioner of Customs, C.S.I. Airport, Mumbai, vide his OIO No. ADC/AK/ADJN/03/2019-20 dated 10-04-2019 ordered absolute confiscation of the recovered 589 grams of gold wires valued at Rs.16,29,739/- under

Section 111 (d), (l) and (m) of Customs Act, 1962. A personal penalty of Rs 1,80,000/- under section 112(a) & (b) of the Customs Act, 1962 was also imposed on the applicant.

4. Aggrieved, with this Order, the Applicant filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Mumbai-III, who vide Order-in-Appeal No. MUM-CUSTOM-PAX-APP-887/2020-21 dated 22.01.2021 [F.No. S/49-445/2019] [Date of issue: 08.02.2021] upheld the order passed by the OAA.

5. Aggrieved by this Order, the applicant has filed this revision application on the undermentioned grounds of revision;

5.1 That Gold is not a prohibited item. Gold imported by the petitioner was not liable for absolute confiscation. Gold is not prohibited goods, but only restricted goods. Import of gold is no longer prohibited and therefore, it is the duty on the part of the adjudicating authority, if he is of the view that it is liable for confiscation, to permit its redemption on appropriate fine. The applicant referred to various case laws in support of the same.

5.2 The intention behind the provisions of Section 125 is clear that import of such goods under any circumstances would cause danger to the health, welfare or morals of people as a whole. This would not apply to a case where import/export of goods is permitted subject to certain conditions or to a certain category of persons and which are ordered to be confiscated for the reason that the condition has not been complied.

5.3 The applicant in favor of their appeal have relied on the undermentioned clutch of cases;

- i) Yakub Ibrahim Yusuf vs CC, Mumbai 2011 (263) E.L.T. 685 (Tri. Mumbai);
- ii) Neyveli Lignite Cor Ltd vs UO] 2009 (242) E.L.T. 487 (Mad);
- iii) Hargovind Das K. Joshi Vs Collector of customs 1992 (61) ELT 172(SC);
- iv) Universal Traders v. Commissioner 2009 (240) E.L.T. A78 (SC);
- v) Gauri Enterprises Vs CC, Pune 2002 (145) ELT (705) (Tri Bangalore);
- vi) CC (Airport), Mumbai Vs Alfred Menezes 2009 (242) ELT 334 (Bom.);
- vii) Yakub Ibrahim Yusuf 2011 (263) EL. T. 685 (Tri. - Mumbai);
- ix) Shaik Jamal Basha Vs Government of India 1997 (91) ELT 277(AP);
- x) VP Hameed Vs Collector of Customs Mumbai 1994(73) ELT 425 (Tri);
- xi) T. Elavarasan Vs Commissioner of Customs (Airport), Chennai 2011 (266) ELT 167 (Mad);
- xii) Kadar Mydin v/s Commissioner of Customs (Preventive), West Bengal 2011 (136) ELT 758;
- xiii) Sapna Sanjeeva Kolhi v/s Commissioner of Customs, Airport, Mumbai ELT 305 ;
- xiv) Vatakkaal Moosa v/s collector of Customs, Cochin 1994 (72) ELT (G.O. I.);
- xv) Halithu Ibrahim vs CC [2002-TIOL 195- CESTAT-MAD.;
- xvi) Krishnakumari vs CC, Chennai 2008 (229) ELT 222 (Tri-Chennai);
- xvii) S.Rajagopal vs CC, Trichy 2007 (219) ELT 435 (Tri- Chennai);
- xviii) M. Arumugam Vs CC, Trichirapalli 2007 (220) ELT 311 (Tri- Chennai);
- xix) Union of India vs Dhanak M. Ramji 2009 (248) E.L.T. 127 (Bom.),
- xx) etc

5.4 Decisions relied upon by the Commissioner of Customs (Appeals) cannot be made applicable to the case of the petitioner.

5.5 Petitioner claims ownership of the goods under absolute confiscation and prays for redemption of the gold on redemption fine and penalty.

5.6 Penalty of Rs.1,80,000/- imposed on the Petitioner is disproportionate to the value of the gold imported by him. Imposition of heavy penalty on the petitioner is not sustainable.

Under the circumstances of the case, the applicant concluded that it was a single and solitary incident of an alleged act of smuggling of goods which can never be justifiable ground for absolute confiscation invoking the provision of Section 111 of the Customs Act, 1962. That they committed the mistake only with an intention to save little money and make some profit. The Applicants requested to release the confiscated gold on payment of appropriate fine, penalty and duty.

6. Personal hearing in the matter was scheduled for 23-05-2023. Shri Prakash Shingarani, Advocate of the applicant, appeared for the hearing and submitted that the applicant brought small quantity of jewellery for personal use, that there was no ingenious concealment and the applicant is not a habitual offender. He requested to allow the option to redeem the goods on nominal fine and penalty.

7. The Government has gone through the facts of the case, The Applicant was intercepted when he had attempted to walk through the green channel. Government observes that the applicant had failed to declare the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Government finds that the gold wires weighing 589 grams of gold wires valued at Rs.16,29,739/- was concealed by coating it with silver and then it was concealed in the inner lining of the 02 checked-in bags. The applicants had adopted such a method to conceal the gold wires which reveals that they did not intend to declare the gold and thereby evade payment of Customs Duty. The act was pre-planned and used to avoid detection and thereby to evade

Customs duty. The applicant had not disclosed that he was carrying the dutiable goods. By not declaring the gold carried by him, the applicant clearly revealed his intention not to declare the gold and pay Customs duty on it. The Government finds that the confiscation of the impugned gold 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-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply :*

*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.*

*(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.*

*(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."*

8.2 It is undisputed that as per the Foreign Trade Policy applicable during the period, gold was not freely importable and it could be imported only by the banks authorized by the RBI or by others authorized by DGFT and to some extent by passengers. Therefore, gold which is a restricted item for import but which was imported without fulfilling the conditions for import becomes a prohibited goods in terms of Section 2(33) and hence it liable for confiscation under Section 111(d) of the Customs Act.

9.1 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" in terms of Section 2(33) and hence it is liable for confiscation under Section 111(d) of the Customs Act, 1962.

9.2 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.

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."*

11.1 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.

11.2 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.

11.3 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, the quantum of gold involved is small (only 589 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. The applicant claimed that the gold was for personal use. Further, there were no allegations that the Applicant is a habitual offender and was involved in similar offences 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.

13. The absolute confiscation of the gold, leading to dispossession 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 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 i.e gold wires weighing 589 grams of gold wires valued at Rs.16,29,739/- on payment of redemption fine of Rs. 3,20,000/- (Rupees Three Lakh Twenty Thousand only).

14.2 The Government finds that the penalty of Rs. 1,80,000/- imposed on the applicant under Section 112(a) & (b) of the Customs Act, 1962 for the impugned goods i.e gold wires weighing 589 grams of gold wires valued at Rs.16,29,739/- is slightly high and hence the same is reduced to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only).

15. 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

ORDER NO. 521/2023-CUS (WZ)/ASRA/MUMBAI DATED 30.06.2023

To,

1. Mr. Abdul Khadir Muazzam, Kola House, 5<sup>th</sup> Cross Bunder Road, Bhatkal, North Kannada District, Karnataka-581320.
2. The Pr. Commissioner of Customs, C.S.I Airport, Terminal 2, Level-II, Sahar, Andheri (East), Mumbai 400 099.
3. The Commissioner of Customs (Appeals), Mumbai-III, 5th Floor, Avas Corporate Point, Makwana Lane, Behind S.M.Centre, Andheri Kurla Road, Andheri (East), Mumbai 400 059.

Copy to:

1. Advocate Prakash K. Shingarani, 12/334, Vivek, New MIG Colony, Bandra East, Mumbai-400051
2. Sr. P.S. to AS (RA), Mumbai.
3. File Copy.
4. Notice Board.