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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

F.No. 380/11/B/2017-RA(MUM)

9809

Date of Issue :

25.07.23

ORDER NO. 535 /2023-CUS (WZ)/ASRA/MUMBAI DATED 18.07.2023
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 : Commissioner of Customs, Marmagaoa, Goa.

Respondent : Shri. Santosh Shridhar Malgaonkar.

Subject : Subject : Revision Application filed, under Section
129DD of the Customs Act, 1962 against the Order-in-
Appeal No. GOA-CUSTM-000-APP-331-2016-17 dated
31.01.2017 issued on 14.02.2017 through F.No. A-
22/CUS/GOA/2016-17 passed by the Commissioner of
Customs (Appeals), Pune Appeal-II(GOA).

ORDER

This revision application has been filed by Commissioner of Customs, Customs House, Marmagao, Goa - 403803 (herein after referred to as the Applicant) against the Order-In-Appeal No. GOA-CUSTOM-000-APP-331-2016-17 dated 31.01.2017 issued on 14.02.2017 through F.No. A-22/CUS/GOA/2016-17 passed by the Commissioner of Customs (Appeals), Pune Appeal-II(GOA).

2(a). Brief facts of the case are that the respondent on arrival at Dabolim Airport, Goa on 22.06.2015 from Dubai by Air India Flight No. AI-984 from sector Dubai-Mumbai-Goa, was intercepted at the exit gate by the Customs Officers after he had walked through the green channel. A thorough examination of the hand baggage and personal search of the respondent led to the recovery of 12 gold bars of 10 tolas each, collectively weighing 1399.68 grams and valued at Rs. 34,78,450/- kept concealed in a pouch found in the hand baggage. The respondent had filed a Customs declaration form showing the value of the goods in his possession as nil.

2(b). The respondent in his statement recorded under Section 108 of the Customs Act, 1962 admitted that the gold bars did not belong to him and he had agreed to carry the same for a monetary consideration.

3. After due process of the law, the Original Adjudicating Authority, viz Additional Commissioner of Customs, Customs House, Marmagao vide Order-In-Original No. 22/2016-ADC(CUS) dated 13.05.2016 through F.No. 11/16/2015-R&I(APT)(AIU) ordered for the absolute confiscation of the 12 gold bars, collectively weighing 1399.68 grams and valued at Rs. 34,78,450/- under Section 111(d), 111(1) and 111 (m) ibid of the Customs Act, 1962 and

a penalty of Rs. 3,50,000/ was also imposed on the respondent under section of 112 (a) of Customs Act, 1962.

4. Aggrieved by the said order, the respondent filed an appeal before the Appellate Authority (AA) viz, Commissioner of Customs (Appeals), Pune Appeal-II(GOA) who vide Order-In-Appeal No. GOA-CUSTOM-000-APP-331-2016-17 dated 31.01.2017 issued on 14.02.2017 through F.No. A-22/CUS/GOA/2016-17 allowed to redeem the 12 gold bars on payment of a redemption fine of 15% of the seizure value of the gold. The quantum of penalty imposed on the respondent by the OAA was upheld by the AA.

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

5.01.the AA had not considered the ratio of the judgement dated 23.08.2016 passed by the Hon'ble High Court of Madras in the case of Commissioner of Customs (Air), Chennai – 1 v/s. Shri. P. Sinnasamy in C.M.A No. 1631 of 2008.

5.02. the AA had not abided by the maxim 'ut res magis valiat quam pereat' i.e. lest the intention of the legislature may go in vain or be left to evaporate into thin air.

5.03. that the literal interpretation of the words 'prohibited goods', and the contention that gold was not notified and therefore can be released, would cut down the wide ambit of the inbuilt prohibitions and restrictions in the Customs Act, 1962 and any other law for the time being in force.

5.04. that the different provisions in the statute should not be interpreted in abstract but should be construed keeping in mind the whole enactment and the dominant purpose that it may express.

5.05.the expression in Section 2(33) of the Customs Act, 1962, 'prohibition under this Act', or any other law for the time being, has to be examined with other provisions in the Customs Act, 1962; that Section 2(39) of the Customs Act, 1962 defines 'smuggling', in relation to any goods, which means, any act or omission which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act, 1962; that Chapter

- IV of the Customs Act, 1962 dealt with prohibition of importation and exportation of goods; Section 11 deals with the power to prohibit importation or exportation of goods,
- 5.06. one of the important aspects to be taken note by the authorities while exercising the powers under Section 125 of the Act was whether, import of goods was prohibited, within the meaning of Section 2(33) of the Customs Act, 1962 and where, in any other law for the time being in force, such prohibition was mentioned?
 - 5.07. that reliance is placed on the case law of Samyanathan Murugesan vs. Commissioner of Customs [2010-254-ELT-A15(SC)] passed by the Apex Court.
 - 5.08. that from the various case laws cited, it was manifestly clear that the adjudicating authorities / Courts have to consider two aspects viz, (i). eligibility of the passengers to import the goods and (ii). whether such passengers had fulfilled the conditions of import or export, any restriction on import or export, which is also treated as prohibition.
 - 5.09. that there may not be total prohibition for import of goods, but if import is not done lawfully, in other words against any prohibition or restriction, which are inbuilt in the Customs Act, 1962 or any other law for the time being in force, then such goods should fall with the definition of Section 2(33) of the Act.
 - 5.10. reliance is also placed on the judgement of the Apex Court in the case of Om Prakash Bhatia vs. Commissioner of Customs, Delhi [2003(155) ELT 423(SC)].
 - 5.11. that the exercising of the discretion under Section 125 of the Customs Act, 1962 by discarding the rules, procedure, the purpose of which it is conferred and object sought to be achieved is not legally tenable. Order passed while exercising the discretion under Section 125 of the Customs Act, 1962 is not legally tenable.
 - 5.12. Reliance is placed on Public Notice No. 214/(PN)/92-97 dated 01.06.1994 as amended from time to time, in which gold could be imported only against a Special Import Licence by agencies authorized by RBI.
 - 5.13. Non-cognizance of the ratio of the judgement of Hon'ble Supreme Court relied upon by the OAA in the OIO.
 - 5.14. in their exhaustive written submission appended to their revision application, the applicant has relied upon a host of case law, a few of those are as below;
 - (a). P. Sinnasamy vs. Commissioner of Customs (Air), Chennai – I passed by Hon'ble High Court of Madras alongwith the cases of the Apex Court / High Courts referred therein.
 - (b). Poppatlal Shah vs. State of Madras – AIR 1953 SC 274,

- (c). State of Bihar vs. Hira Lal Kejriwa. – AIR 1960 SC 47,
- (d). Om Prakash Bhatia vs. Commr. Of Customs, Delhi – 2003(155) ELT 423 (SC),
- (e). Commr. Of Customs (Air), Chennai – I vs. Samynathan Murugesan – 2009 (247) ELT 21 (Mad) confirmed by Apex Court reported in 2010 (254) ELT A-15 (SC),
- (f), Abdul Razak vs. UOI – 2012 (275) ELT 300 (Ker)(DB),
- (g). Commr. Of Customs (Chennai) vs. Brinda Enterprises – 2010 (262) ELT 239 (Mad),
- (h). Commr. Of Customs (Prev), Mumbai vs. M. Ambalal & Co. – 2010(260) ELT 487 (SC),
- (i). etc.

Applicant has prayed to set aside the order passed by the appellate authority and to pass any order as deemed fit.

6. Personal hearings in the case including option of online hearing was scheduled for 11.11.2022, 24.11.2022, 13.12.2022, 10.01.2023, 25.01.2023 and 02.02.2023. Sufficient opportunities have been given to the applicant / respondent. None turned up on behalf of the Applicant / Respondent for the personal hearing. Therefore, the case is being taken up for a decision, ex-parte, on the basis of evidence available on the records.

7. The Government has gone through the facts of the case and notes that the Respondent had not declared the gold and had passed through the green channel. Also, in the Customs Declaration Form, the respondent had not declared the gold bars. The Respondent had clearly failed to make a truthful declaration of the goods to the Customs at the first instance as required under Section 77 of the Customs Act, 1962. Had the respondent not been intercepted, he would have gotten away without paying Customs duty on the twelve gold bars. The Government finds that the confiscation of the gold is 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. It is undisputed that Section (l) and (m) are also applicable in this case as the respondent had adopted an innovative method and it was not included in the declaration. Therefore, the gold was also liable for confiscation under these Sections.

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”.

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 respondent thus, liable for penalty.

10. 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. In a recent judgement dated 17.02.2022 passed in D.B. Civil Writ Petition no. 12001 / 2020, in the case of Manoj Kumar Sharma vs. UOI and othrs, the Hon’ble High Court, Rajasthan (Jaipur Bench) at paras 15, 16 and 17 held as under;

"15. *The second area of concern is applicability of Section 125 of the Act. Sub-section (1) of Section 125 provides that whenever confiscation of any goods is authorized by the Act the officer adjudging it may in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force and shall in 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. This provision thus comes in two parts. The first part covers the cases where importation or exportation of the goods is prohibited under the Act. In such a case discretion is given to the competent authority to offer redemption fine in lieu of confiscation. The second part covers a case where importation or Not exportation of the goods is not prohibited. In such a case there is a mandate to offer redemption fine in lieu of confiscation as the officer thinks fit. In the present case all three authorities have provided for absolute confiscation of the goods without any facility of payment of redemption fine. This in our view was not correct. This is exactly what the Andhra Pradesh High Court has held in case of **Shaik Jamal Basha Vs. Government of India reported in 1997 (91) ELT 277 (AP)**. The Division Bench of the High Court in the context of Section 125 of the Customs Act had held as under:-*

"3. But, all the same; we find the petitioner is entitled to a different relief. The order of confiscation is made under Section 111 of the Customs Act, 1962 on account of concealment. Section 125 requires that whenever confiscation of any goods is authorised by the Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under the 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 an option to pay in lieu of confiscation such fine as the said officer thinks fit. Rule 9 of the Baggage Rules, 1978 framed under Section 79(2) of the Customs, Act, 1962 lists Gold in any form other than ornaments in Appendix B of the Rules as articles which shall not be imported free of duty. Hence gold in the form other than ornaments is entitled to be imported on payment of duty. Attempt to import gold unauthorisedly will thus come under the second part of Section 125(1) of the Act where the adjudging officer is under mandatory duty to give option to the person found guilty to pay (fine) in lieu of confiscation, Section 125 of the Act leaves option

to the officer to grant the benefit or not so far as goods whose import is prohibited but no such option is available in respect of goods which can be imported, but because of the method of importation adopted, become liable for confiscation....."

16. *This view may seem incongruent with the view expressed by Gujarat High Court in case of Bhargavraj Rameshkumar Mehta (supra) which we have also followed in this judgment but flavours of Section 112 and 125 of the Customs Act are entirely different. Section 112 of the Act pertains to penalty for improper importation of goods. Section 125 on the other hand pertains to option to pay fine in lieu of confiscation. As noted sub-section (1) of Section 125 comes in two parts. Whenever confiscation of goods is authorized under the Act, as per sub-section (1) of Section 125 the adjudicating officer has a discretion to offer redemption fine in lieu of confiscation in case of goods importation or exportation whereof is prohibited. In all other cases there is a statutory mandate on the adjudicating officer to offer such redemption fine. If the interpretation of Section 112 and 125(1) is not reconciled as above, this latter portion of sub-section (1) of Section 125 which covers all cases except where the importation or exportation of the goods is prohibited, would become otiose.*

17. *Learned counsel for the respondents however heavily relied on the decision of Supreme Court in case of Om Prakash Bhatia Vs. Commissioner of Customs, Delhi reported in AIR 2003 SC 3581. Our attention was drawn to paragraph 9 and 10 of the judgment. However in our view this decision does not hold anything contrary to what we have observed in connection with Section 125 of the Customs Act. In fact it was a case in which the Supreme Court had confirmed the view of the Customs authorities of offering redemption fine in lieu of confiscation."*

12(a). In Custom Appeal No.7 of 2019 decided on 06.07.2022, in the case of Commissioner of Customs, Aliganj, Lucknow vs. Rajesh Jhamatmal Bhat, the Hon'ble High Court of Allahabad, Lucknow Bench at para 21 & 22 of the Order, [2022(382)ELT 345(All)], held as under;

"21. *Section 125 of the Act deals with confiscation of two separate categories of goods. It provides that in the case of goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, the Officer adjudicating **may** give an option to pay in lieu of confiscation such fine as the said officer thinks fit. However, in case of any other goods,*

the officer adjudicating shall give an option to pay in lieu of confiscation such fine as the said officer thinks fit. The Commissioner (Appeals) has held that the gold is not a prohibited item, it should be offered for redemption in terms of Section 125 of the Act and this finding has not been assailed by the Appellants in this Appeal.

22. *In view of the aforesaid discussion, our answer to the first substantial question of law framed in this Appeal is that the Additional Commissioner, Customs (P.) Commissionerate, Lucknow had passed the order of confiscation of gold without taking into consideration the fact the gold is not a prohibited item and, therefore, it should be offered for redemption in terms of Section 125 of the Act and thus the Customs Excise & Service Tax Appellate Tribunal, Allahabad has not committed any error in upholding the order dated 27-8-2018 passed by 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."*

12(b). Further, in the above cited case, department had filed a review application which was dismissed [2023(7) Centax 236(All)].

13. 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. 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. In case of goods, such as, gold which become prohibited for violation of certain conditions, the Adjudicating Authority may allow redemption

14. Government notes that while allowing the redemption of the goods, the AA at page nos. 7, 8 and 9 of his OIA, has observed as under;

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, without prejudice to the provisions of the provisio to sub-section (1) of Section 115, such fine shall not exceed the market price of the goods confiscated, lss 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.

A careful reading of the aforesaid provision reveals that in case of non-prohibited goods, the adjudicating authority does not have any option but to mandatorily release and in case of prohibited goods, he may or may not, allow release of he confiscated goods on payment of redemption fine to the owner of the goods or where such owner is not known, to the person from whose possession or custody such goods have been seized. Two things emanate from the above provision, one, that even the prohibited goods could be released on payment of redemption fine and second, that it could be released to any such person from whom possession or custody the seizure of the goods has been made in the eventuality where owner of the seized goods is not known.

Coming to the present case where the owner of the Gold is not known and has been claimed to be released to a person (the appellat Shri Santosh Shridhar Malgaonkar here) from whom

possession the Gold was recovered, I find no irregularity in this as the law specifically covers such situations as discussed above. Therefore, the claim of the appellant to get the release of the Gold on payment of fine is perfectly legal in terms of Section 125 of the Customs Act. Now coming to the point of whether confiscated Gold, a prohibited goods, could be released on payment of redemption fine, I find that the same may be allowed keeping in mind overall facts and circumstances of the case. This view of mine is supported by the judgment of Hon'ble High Court Mumbai passed in the case of CC Airport) Mumbai vs Alfred Menezes 2009 (242)ELT 334 (Bom.), holding that discretion vests with the adjudicating authority to give option to release of the goods on payment of fine even though the same goods are liable for absolute confiscation in view of the importation of the said goods being prohibited.

From the fact of the case I find that the seized Gold was kept in a black colour pouch hidden in the hand baggage and was not declared to the Customs. I don't find appellant employing any innovative and novel modus-operandi to smuggle the Gold, not known to the department, thus, it appears to me a simple case of smuggling of Gold to make fast bucks illegally. There being hardly difference in price of Gold in India and in Dubai, by a rough estimate not more than 7-8%, therefore, the real motive of smuggling was to capitalize this margin of 7-8% as profit quickly, as turn around time to purchase the Gold in Dubai and smuggle it in India and make profits by selling the same in India is hardly of a few days. Smuggling of Gold, unlike such contrabands as that of the Arms & ammunitions and Drugs etc., is not prejudicial to the health of the society either, therefore, I am inclined to allow redeeming the confiscated Gold on payment of the redemption fine by the appellant. This view of mine is supported by the judgment of the Hon'ble Supreme Court passed in the case of Hargovind Das K. Joshi vs Collector of Customs 1992 (61) ELT 172 SC in which the original adjudicating authority had absolutely confiscated the goods without considering the option to release the goods on payment of fine, thus, Hon'ble SC remanded the matter back to the Collector for exercising his discretion of releasing the goods on payment of fine under Section 125 of the Customs Act. I also find that Hon'ble Supreme Court in the case of Dhanak Ramji vide its judgment dated 08.03.2010 reported in 2010 (252)ELT A102 SC upheld the decision of Hon'ble High Court, Mumbai 2009 (248) ELT 127 (Bom.) to the effect that goods by themselves were not prohibited but became prohibited by virtue of law and there is no

error of law committed by the Tribunal in directing the release of the confiscated goods on payment of fine. There was discretion, which has been properly exercised. (Para 7 of the order). Still further, I also find that Hon'ble CESTAT Mumbai in the case of Yakub Ibrahim Yusuf 2011(263) ELT 685 (Tri. Mumbai) while allowing the redemption of Gold not declared before Customs held that:

Redemption fine-Option of Owner of goods not known - Option of redemption has to be given to person from whose possession impugned goods are recovered- On facts, option of redemption allowed to person who had illicitly imported gold with view to earn, profit by selling it, even if he had not claimed its ownership- Section 125 of Customs Actr 1962 (Para 5.6).

Similar view was also taken by the Hon'ble CESTAT in case of VP Hameed vs Collector of Customs, Mumbai 1994 (73)ELT 425 (Tri.) allowing redeeming the Gold on payment of redemption fine.

In view of above discussion I allow redeeming the confiscated Gold on payment of the redemption fine by the appellant. As regards the quantum of the fine, I feel that it should be such as to wipe out the margin of profits completely and also should act as an effective deterrent financially.”

15. Government finds that the AA has used his discretion in releasing the gold. The option to allow redemption of seized goods is the discretionary power of the adjudicating / appellate authority depending on the facts of each case and after examining the merits. Government observes that while allowing the goods to be redeemed, the AA has relied upon a host of cases where the adjudicating authority had released the gold of varying quantities and the same were accepted by the Department. Further, in the extant revision application, the applicant has not controverted the same. A case of parity and fairness was made out by the respondent before the AA.

16. 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. Some of these cases have been cited by the AA in the OIA.

17. Government finds that the AA has relied upon the precedent case laws on the subject and have applied the case laws judiciously while granting release of the gold bar. Further, the AA has held that though the respondent was not the owner of the gold there are precedent case laws which have allowed the release of the gold to the person from whom the recovery was effected. A case that the respondent was a habitual offender had not been made out. Also, a case that the concealment was ingenious had not been made out. The 12 gold bars had been recovered from the hand baggage of the respondent. All these have been taken into account while allowing the gold to be released on redemption. The AA has used discretion available under Section 125 of the Customs Act, 1962 and allowed the respondent to redeem the gold on payment of fine. Government finds the OIA passed by the AA in as much as allowing the gold to be released is legal and proper. However, Government finds that the redemption fine of 15% of the seizure value is on the lower side and not proportionate to the misdemeanor committed by the respondent especially, that he was returning back after a short stay of 4-5 days and is inclined to increase the same which would also act as a deterrent and disincentive to those who harbor such similar unscrupulous plans.

18. Accordingly, the OIA is modified only in respect of the quantum of redemption fine to be paid for exercising the option to redeem the 12 gold bars and the same to be released on payment of a fine of Rs 7,50,000/- (Rupees Seven Lakhs fifty thousand only). In other words, the grant of option to redeem the 12 gold bars passed by the AA in the OIA is upheld and the said 12 gold bars are allowed to be redeemed on payment of aforesaid redemption fine.

19. The penalty of Rs. 3,50,000/- imposed on the respondent under Section 112(a) of the Customs Act, 1962 by the OAA and upheld by the AA is commensurate with the omissions and commissions committed and Government is not inclined to interfere in the same.

20. Revision Application filed by the applicant is disposed of on above terms.

Shrawan
18/7/23
(SHRAWAN KUMAR)

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

ORDER No. 535/2023-CUS (WZ) /ASRA/MUMBAI DATED 8.07.2023

To,

1. COMMISSIONER OF CUSTOMS - [GOA], CUSTOMS HOUSE, MARMAGOA, GOA - 403 803.
2. Shri. Santosh Shridhar Malgaonkar, R/o. 304, Shivdarsha CHS, Sector - 03, Plot No. E-69, Kharghar, Navi Mumbai - 410 210.

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